

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Thursday, January 09, 2014**

SUBJECT	DESCRIPTION	PRESENTER
	Organizational Meeting: Yearly Agenda	Chairman Wills
	Introduction of Committee Members	
	Administrative Rules	Vice Chairman Luker
	Announcement of Subcommittees	

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep Be Determined
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Francoise Cleveland  
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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, January 09, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, Be Determined, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Holly Koole, IPAA; Dennis Stevenson, Rules Coordinator

**Chairman Wills** called the meeting to order at 1:31 PM.

**Chairman Wills** welcomed the committee and introduced the new committee secretary, **Francoise Cleveland**. House Page **Julia Horman**, a Hillcrest High School senior, was also introduced.

**Vice Chairman Luker**, in charge of the Rules Review, assigned two subcommittees to look over the rules and report back to the full committee.

The first subcommittee will be chaired by **Rep. Bateman**. **Reps. Malek, Horman, and Meline** will be members of the subcommittee. This subcommittee will look at **Docket No. 05-0102-1301** Rules and Standards for Secure Juvenile Detention Centers; **Docket No. 57-0101-1201** Rules Governing The Sexual Offender Management Board; and, **Docket No. 57-0101-1202** Rules Governing The Sexual Offender Management Board.

**Rep. Dayley** will be chairman of the second subcommittee. **Reps. Trujillo, Packer, and Burgoyne** are assigned to this subcommittee. This subcommittee will look at **Docket No. 11-1001-1301** Rules Governing Idaho Public Safety and Security Information System; **Docket No. 11-1002-1301** Rules Establishing Fees for Services, Idaho Criminal Justice Information System; and, **Docket No. 11-1101-1301** Rules of the Idaho Peace Officer Standards and Training Council.

**Vice-Chairman Luker** would like a report back to the full committee within three weeks.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 1:38 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**DAYLEY SUBCOMMITTEE**  
Rules  
**2:00 P.M.**  
**Room EW42**  
**Monday, January 13, 2014**

DOCKET NO.	DESCRIPTION	PRESENTER
	Rules of the Idaho State Police	
<a href="#">11-1001-1301</a>	Idaho Public Safety and Security Information System (Fee Rule)	Dawn Peck Idaho State Police
<a href="#">11-1002-1301</a>	Establishing Fees for Services-Idaho Criminal Justice Information System	Dawn Peck Idaho State Police
<a href="#">11-1101-1301</a>	Idaho Peace Officer Standards and Training Council	William Flink, POST Division Administrator Idaho State Police

COMMITTEE MEMBERS

Chairman Dayley

Rep. Trujillo

Rep. Packer

Rep. Burgoyne

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**DAYLEY SUBCOMMITTEE**  
Rules

**DATE:** Monday, January 13, 2014  
**TIME:** 2:00 P.M.  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Dayley, Representatives Trujillo, Packer, Burgoyne  
**ABSENT/  
EXCUSED:** None.  
**GUESTS:** Dennis Stevenson, Rules Coordinator

**Chairman Dayley** called the meeting to order at 2:39 PM.

**DOCKET NO. 11-1002-1301:** **Dawn Peck**, Manager of the Idaho State Police Bureau of Criminal Identification, presented **Docket No. 11-1002-1301**, which is a pending rule change for the Idaho Criminal Justice Information Service. She detailed the rule change as follows. The title was changed to reflect the rules cover not only assessment fees but also state criminal history records and crime information. The pending rule also defines the terms acquittal, criminal summons, dismissal, expunge and serious misdemeanor. The pending rule change adds procedures for expungement of criminal history record information and defines the procedure to accomplish an expungement. Finally, there is an addition for contesting the accuracy and completeness of a criminal history record; although the policy has been in place for a long time, it will now be clear in rule.

**MOTION:** **Rep. Burgoyne** made the motion to recommend approval of **Docket No. 11-1002-1301** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 11-1001-1301:** **Dawn Peck**, Manager of the Idaho State Police Bureau of Criminal Identification, presented **Docket No. 11-1001-1301**, which is the pending fee rule change for the Idaho Public Safety and Security Information System, commonly known as ILETS. Ms. Peck gave a review of the history of ILETS and its mission. In 2008, it was determined that the current funding system was insufficient to sustain the system. In 2009 and again in 2013, the board conducted a survey of how other states funded like systems. It was determined there was no clear way to fund the program. Previous attempts to pass a title transfer fee were unsuccessful; therefore, a collaborative group came together this past year to author this shared funding plan. The enhanced budget would include the funding of two critical staff positions, system enhancements, training, critical equipment, and a communications backup/disaster recovery site. This user fee request is one part of the shared funding plan which makes up a portion of the shortfall, the rest is made up from a requested increase of funding of the FY2015 Idaho State Police budget.

**Ms. Peck** responded to questions from the committee saying that constituencies all across the state, from agencies to local municipalities, were involved in the process and want this fee rule passed. She has heard of no objections from any law enforcement.

**MOTION:** **Rep. Packer** made the motion to recommend approval of **Docket No 11-1001-1301** to the full committee. **Motion carried by voice vote.**

Chairman Dayley recessed the committee at 3:02 PM and reconvened at 3:10 PM.

**DOCKET NO.  
11-1101-1301:**

**Rory Olsen**, Deputy Administrator of Peace Officer Standards and Training, presented **Docket No. 11-1101-1301**, which is a pending rule change defining and clarifying the character qualification and disqualification in the area of moral turpitude, drug use, and criminal record. Also, this allows students who are applicants attending college training programs to appeal their denial of application to the POST Council Hearing Board.

**Mr. Olsen**, explained the POST is responsible for the minimum employment and training standards for law enforcement personnel serving the criminal justice system in the state of Idaho. The Idaho Legislature established requirements relating to competency and reliability for employment and retention of peace officers. According to Idaho Code, the POST council may take into consideration the commission of any act of offense involving moral turpitude to ensure an applicant is of good moral character. Although the language has been in place since 2003, the state of Idaho has not clearly defined moral turpitude within the statutory scheme. The definition has been left up to the discretion of either the POST Division Administrator and/or the Post Council. Two years ago, the POST became aware of the Idaho Supreme Court's decisions regarding void for vagueness doctrine. From there the language proposed today was vetted through the POST Council, individual Chiefs, Sheriffs, and agency administrators, the Idaho Chiefs of Police Association and the Idaho Sheriffs Association. The final remarks and comments were adopted into the rules before the committee today.

Discussion from the committee followed in regards to the definition of moral turpitude, whether the definition offered was too broad thereby inadvertently disqualifying applicants.

**MOTION:**

**Rep. Packer** made a motion to send **Docket No. 11-1101-1301** to the full committee for further review. **Motion carried by voice vote.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 4:17 PM.

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Representative Dayley  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**BATEMAN SUBCOMMITTEE**  
Bateman  
8:00 A.M.  
Room EW05  
Monday, January 20, 2014

DOCKET NO.	DESCRIPTION	PRESENTER
<a href="#">05-0102-1301</a>	Rules and Standards for Secure Juvenile Detention Centers	Sharon Harrigfeld Director, Idaho Department of Juvenile Corrections
<a href="#">57-0101-1201</a>	Rules of the Sexual Offender Management Board (Chapter Repeal)	Kathy Baird Management Assistant, Sexual Offender Management Board
<a href="#">57-0101-1202</a>	Rules of the Sexual Offender Management Board (Fee Rule)	Kathy Baird

COMMITTEE MEMBERS

Chairman Bateman  
Rep. Malek  
Rep. Horman  
Rep. Meline

COMMITTEE SECRETARY

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MINUTES  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**BATEMAN SUBCOMMITTEE**  
Bateman

**DATE:** Monday, January 20, 2014

**TIME:** 8:00 A.M.

**PLACE:** Room EW05

**MEMBERS:** Chairman Bateman, Representatives Malek, Horman, Meline

**ABSENT/  
EXCUSED:** Representative Malek

**GUESTS:** Karen Skow, Idaho Department of Juvenile Correction; Marey Chadwell, Idaho Department of Juvenile Correction

**Chairman Bateman** called the meeting to order at 8:02 AM.

**DOCKET NO. 05-0102-1301:** **Sharon Harrigfeld**, Director of the Department of Juvenile Corrections, presented **Docket No. 05-0102-1301**, the Pending Rule for the Department of Juvenile Corrections providing clarification on the Prison Rape Elimination Act (PREA) federal standards as it relates to Idaho detention standards. Ms. Harrigfeld explained the Juvenile Corrections Act's legislative intent is to provide a continuum of care for juveniles who have committed crimes. It also defines the duties of the Department of Juvenile Corrections, such as defining minimum standards for detention and, based on these standards, the care and certification of approved detention facilities. These rules focus on the safety and security of juveniles in county juvenile detention facilities, incorporates standards to adopt a zero tolerance toward sexual assault while in detention, and institutes best practices established from the PREA. A collaborative body made up of county detention facility administrators and one county commissioner helped in the development and revision of these rules and, subsequently, supported the final document. Significant modifications in these rules include: the change in staffing pattern during sleeping hours; an increase of frequency of background checks to every five years for those who have contact with juveniles; and, more thorough standards for the detection, prevention, reduction and response to sexual harassment and assault of juveniles in detention facilities.

**MOTION:** **Rep. Meline** made a motion to recommend approval of **Docket No. 05-0102-1301** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 57-0101-1201:** **Kathy Baird**, Management Assistant for the Sexual Offenders Management Board, presented **Docket No. 57-0101-1201**, the Pending Rule to repeal the entire chapter of the existing Administrative Rule. This rule has been entirely rewritten.

**MOTION:** **Rep. Horman** made a motion to recommend approval of **Docket No. 57-0101-1201** to the full committee. **Motion carried by voice vote.**

**DOCKET NO. 57-0101-1202:** **Kathy Baird**, Management Assistant for the Sexual Offenders Management Board, presented **Docket No. 57-0101-1202**, which is the Pending Fee Rule to implement procedures mandated to the Sexual Offender Management Board by Idaho's 2011 Legislature. Ms. Baird explained this Fee Rule is the complete rewrite of IDAPA 57.01.01

**Ms. Baird** explained the new standards create a higher level of consistency and continuity among Idaho's sexual offender service practitioners as well as establish statewide standards for sex offender treatment. Due to the extent in size of the full standard's document, this rule synthesizes the main components from that document.

The board conducted a process of negotiated rule making starting with a national expert in sex offender management who drafted the initial standards. The board used those standards to adopt the proposed rule for the individual needs of Idaho. Statewide input from providers as well as open hearings were conducted.

The standards and administrative rules cover the following: psychosexual evaluations; evaluator qualifications and certification procedures; sex offender treatment; sex offender treatment provider qualifications and certification procedures; and, post conviction sex offender polygraph examiner qualifications and certification procedures. The board is implementing three levels of evaluator and treatment provider certifications: senior level status which is the full status; associate provider for licensed individuals with a minimum of a master's degree; and, a provisional level provider who must be enrolled in a master's program and working towards licensure. These levels provide a pathway for new providers into the system thereby helping with the current shortfall of evaluator and treatment providers in the state.

Fees are outlined for the three types of providers. Each type and level of provider certification, including post conviction sex offender polygraph examiners, has specific education, experience, specialized training and continuing education requirements. The evaluation format has been modified to include specific psychological and risk assessment testing requirements as well as a checklist of static and dynamic variables.

**MOTION:** **Rep. Meline** made a motion to recommend approval of **Docket No. 57-0101-1202** to the full committee. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 8:32 AM.

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Representative Bateman  
Chair

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Francoise Cleveland  
Secretary



**AMENDED AGENDA #2**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Tuesday, January 21, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	<b>Report from Bateman Subcommittee on Rules</b>	
	Rules from the Department of Juvenile Corrections	Rep. Bateman
Docket No.	<a href="#">05-0102-1301</a>	
	Rules from the Sexual Offender Management Board	Rep. Bateman
Docket Nos.	<a href="#">57-0101-1201</a> , <a href="#">57-0101-1202</a>	
	<b>Report from Dayley Subcommittee on Rules</b>	
	Rules from the Idaho Public Safety and Security Information System	Rep. Dayley
Docket Nos.	<a href="#">11-1001-1301</a> , <a href="#">11-1002-1301</a>	
	Rules from the Idaho Peace Officer Standards and Training Council	Rep. Dayley
Docket No.	<a href="#">11-1101-1301</a>	
	<b>Presentations</b>	
	Juvenile Justice Presentation: including update and review of the department	Sharon Harrigfeld, Director Idaho Department of Juvenile Corrections

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, January 21, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Clark Rollins, ISP; Jan Sylvester; Kathy Baird, SOMB; Holly Koole, IPAA; Marcy Chadwell, IGTC; Steven Jett, SW ID Juvenile Detention; Karen Skow, IDJC; Jeff Lavey, ILETs Chairman, Meridian Police Department Chief; Sharon Harrigfeld, IDJC; Brad Hunt, OARC; Mike Kane, ISA

**Chairman Wills** called the meeting to order at 1:30 PM.

**Chairman Wills** welcomed **Rep. McDonald** to the committee then handed the gavel over to **Vice Chairman Luker** for subcommittee reports on the rules.

**Rep. Bateman** presented the Batemen Subcommittee report on Administrative Rules. He relayed the subcommittee's recommendation of approval of all dockets the subcommittee reviewed. To clarify, **Docket No. 57-0101-1201** is a full repeal of the Sexual Offender Management Board Rule; and **Docket No. 57-0101-1202** will replace that Rule. It is a Fee Rule due to the reinstatement of the certification fees paid by providers.

**MOTION:** **Rep. Horman** made a motion to approve **Docket Nos. 05-0102-1301 and 57-0101-1201. Motion carried by voice vote.**

**MOTION:** **Rep. Horman** made a motion to approve **Docket No. 57-0101-1202. The motion carried by voice vote.**

**Rep. Dayley** presented the report from the Dayley Subcommittee on Administrative Rules.

**MOTION:** **Rep. Packer** made a motion to approve **Docket No. 11-1002-1301. Motion carried by voice vote.**

**MOTION:** **Rep. Packer** made a motion to approve **Docket No. 11-1001-1301. Motion carried by voice vote.**

**DOCKET NO. 11-1101-1301:** **Rep. Dayley** briefly described the need for **Docket No. 11-1101-1301** to be reviewed by the full committee. **Rep. Burgoyne** commented on the definition of dismissal and moral turpitude. He is concerned a guilty plea could constitute dismissal by this definition. In addition, any act, not just a crime, can be a determining factor for moral turpitude.

**MOTION:** **Rep. Packer** made a motion to **HOLD Docket No. 11-1101-1301** in committee for further review. **Motion carried by voice vote.**

**Vice Chairman Luker** returned the gavel back over to **Chairman Wills**.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 9, 2014 meeting. **Motion carried by voice vote.**

**Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections (IDJC), presented to the committee an update on juvenile justice in Idaho. Ms. Harrigfeld represents a successful partnership between agency personnel and communities that is perpetually operating to ensure the development of productive citizens through juvenile crime prevention, education, rehabilitation and reintegration. They use a balanced approach model of competency development, community safety, and accountability. The continuum of care is dependent upon the cooperation and coordination between law enforcement and the courts, counties, community organizations, schools, and the state.

IDJC's partners use and learn from cutting edge research to guide juveniles through the system starting at the local level at the earliest possible stage with the least restrictive and most cost effective methods. Successful community-based programs include skills classes, work-in-lieu-of detention classes, community service projects, and restorative conferencing. Their most recent efforts include a reentry-planning grant to develop a strategic plan identifying evidence-based programming that will engage families and community support for the juvenile upon reentry into their community.

Accountability for the offender means accepting personal responsibility and acting to repair the harm. Holding offenders accountable in developmentally appropriate ways reduces reoffending and ensures public safety while producing positive outcomes for children, youth, and families. Restorative conferencing, an excellent tool for reintegration, is a way for counties to hold juvenile offenders accountable for harms that were caused without their further entrance into the juvenile justice system. With a shared grant, the IDJC, the Idaho Department of Education, Idaho Department of Health and Welfare, and the Idaho Supreme Court are developing a mechanism to share information to increase the ability to understand the risks and needs that will result in special outcomes and less recidivism.

Competency is the capacity to do something well that others value. Juveniles need to become competent caring individuals who are concerned for those around them. In order to increase competency, offender's substance abuse issues and mental health disorders are addressed as early as possible with a no-wait list for all juveniles in need of treatment. Within six months of release from custody, almost two-thirds of eligible juveniles released from the IDJC were still working and receiving a taxable wage. For competency development, she stated the IDJC continuously provides training for those involved in the continuum of care. All of IDJC's juvenile justice professionals are trained in mental health services and all who are in direct care are POST certified. Unfortunately, the rate of compensation is impacting the retention of staff. The IDJC is working on ways to retain staff so that competency remains high.

In response to questions from the committee, **Ms. Harrigfeld** relayed that the recidivism rate for the Department of Juvenile Corrections was really low because of early intervention. In regards to mental illness, the IDJC can help the families to manage those behaviors, although it is not something an institution can correct because mental health illnesses are chronic.

**ADJOURN:**      There being no further business to come before the committee, the meeting was adjourned at 2:12 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, January 23, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
	<b>Administrative District Judges Presentation</b>	
	Public Defense Reform	Hon. John Stegner Second Judicial District
	Advancing Justice	Hon. Stephen Dunn Sixth Judicial District
	District Judge Recruitment	Hon. Thomas Ryan Third Judicial District
	Problem-Solving Courts with an Emphasis on Veterans Courts	Hon. Timothy Hansen Fourth Judicial District
	Problem Solving Courts with an Emphasis on Mental Health Courts	Hon. Richard Bevan Fifth Judicial District
	Justice Reinvestment Initiative	Hon. Lansing Hayne First Judicial District
	Justice Reinvestment Initiative, including replication of "Wood Court"	Hon. Jon Shindurling Seventh Judicial District

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, January 23, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative Dayley

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Wills** called the meeting to order at 1:28 PM.

**Chairman Wills** and **Patti Tobias**, Administrative Director of the Courts, welcomed to the committee all the Idaho District Judges who are in town for their annual education conference. This is the first time the germane committee has been honored by the presence of all 45 Idaho District Judges.

**Hon. John Stegner**, Administrative District Judge of Idaho's Second Judicial District, served on the subcommittee for the Criminal Justice Commission which looked at public defense reform. Judge Stegner presented his observations from the committee and his home district. He reported on the lack of coordination of public defenders in the state. There is a disparity of power in how public defense is administered. The prosecutors have the Attorney General who is ready to assist in specialization when needed, whereas public defenders do not have similar coordination when the needs arise. Because the status quo allows for the lowest bidder for the job, the least expensive, not necessarily the most experienced individuals fill these posts.

**Hon. Stephen Dunn**, Administrative District Judge of Idaho's Sixth Judicial District, spoke on the Advancing Justice Initiative: how to resolve all cases in the Idaho Courts in a timely and efficient manner. He highlighted a question that is fairly and appropriately asked by many when it comes to litigation in civil or criminal areas. "Why does it take so long and cost so much?" In order to answer this question, the courts have undertaken a multi-year project called the Advancing Justice Initiative. While still protecting civil rights and procedural fairness, this initiative is determining where the problems lie and how to make the process more efficient, effective, and economical. This effort has a variety of components including case time standards and case management plans. Computer systems must also be in place so different occurring case events can be tracked, challenges can be identified, and the process can be more efficient and effective. Idaho is on the cusp of what is happening across the nation. People are looking to Idaho to see how we are approaching this and the support of the legislature is needed for this to move forward.

**Hon. Thomas Ryan**, Administrative District Judge of Idaho's Third Judicial District and a member of the Idaho Judicial Council, presented on District Judge recruitment. Judge Ryan explained the Idaho Judicial Council is responsible not only for the disciplining but also the recruitment of the judges. There is a problem recruiting enough candidates for each appointment and there needs to be an understanding of why this is happening. This problem is cause for concern, although, thus far the positions have been filled with qualified applicants. Judge Ryan stated there are a number of reasons for this shortage; it is agreed the number one deterrent for attracting applicants is the low rate of compensation. In addition, judges are required to live in the county in which they are retained, which makes the pool of candidates even smaller. In the next five years, more than half of judges will be up for retirement. He said, without changes, the number of qualified applicants for these positions may not be forthcoming. This is a grave concern for the future of our citizens.

**Hon. Timothy Hansen**, Administrative District Judge of Idaho's Fourth Judicial District and presiding judge for the Ada County Veterans Treatment Court, presented on Problem Solving Courts with an emphasis on Veterans Treatment Courts. Judge Hansen focused on several key points. Problem Solving Courts are based on a collaborative effort including judges, prosecutors, defense attorneys, staff, treatment providers, probation officers, and members of the county jail staff. Veteran courts also include the assistance of representatives from the Department of Veterans Affairs, Idaho Division of Veteran Services, and Vet Centers. He said the goal of Problem Solving Courts is to reduce recidivism specifically by helping defendants deal with issues such as substance use disorders or mental health issues. Participants need to work their way successfully through several phases, maintain their sobriety, obtain treatment, housing, and employment where appropriate, establish relationships with family and give back to their community. Judge Hansen stated, participants receive a reward or positive reinforcement for good behavior and negative reinforcement for bad. The work for the participants is hard but well worth the effort. Veteran Treatment Courts, available in Canyon, Ada, Bannock, and Nez Pierce Counties, were established when it was noted most veterans had no criminal history before serving in the military. It appeared their service either led to mental health issues or substance abuse issues. There are 67 Problem Solving Courts throughout Idaho.

**Hon. Richard Bevan**, Administrative District Judge of Idaho's Fifth Judicial District, spoke on Problem Solving Courts with an emphasis on Mental Health Courts. He explained there are 11 Mental Health Courts across the state and one for juveniles. Idaho has become a national model for the development of Mental Health Courts, particularly for rural jurisdictions. These courts demonstrate the effectiveness of using an assertive community treatment team and evidence based treatment practices in probation supervision for those with mental illness, thereby reducing their potential for recidivism. He stated, the key to Mental Health Courts is not only helping those individuals with a significant background in criminal related problems and substance abuse disorders, but also primarily mental health conditions. He said trying to help those with co-occurring problems is challenging, but for those in the program, the money and effort spent has made amazing and significant strides.

**Hon. Lansing Haynes**, Administrative District Judge of Idaho's First Judicial District, spoke on the Justice Reinvestment Initiative. The Justice Reinvestment Initiative is the result of a collaboration of Idaho's three branches of government in conjunction with the Council of State Government's Justice Center. It is a data driven analysis of the Justice System to determine more efficient ways to utilize the public's money to better address the needs of public protection and rehabilitation. Because of a lack of resources for treatment programs, even though someone is a good candidate for probation, the sentencing court may place them in a penitentiary. The Justice Reinvestment Initiative data analysis seems to suggest that early initiative and treatment of an individual along with closely monitored supervision and a quick response to problems has the best chance of that person not becoming a recidivist.

**Hon. Jon Shindurling**, Administrative District Judge of Idaho's Seventh Judicial District, spoke on the Justice Reinvestment Initiative, including replication of the "Wood Court". He explained as a dual diagnosis court, the "Wood Court" was developed to assist the group of offenders that fell between what the justice system was doing in the drug courts and in the mental health courts. The "Wood Court" was a pilot project which explored different ways of addressing the issues and implemented new treatment modalities and innovative ways of working with offenders. An offender starts in an inpatient program through the work release center. The program stabilizes the offender medically, physically, and in terms of employment. This unique program is being looked at nationwide. Judge Shindurling thanked the committee for allowing this experiment to happen. Within the next year or two, there will be some interesting developments of this type in other parts of the state.

**Judge Shindurling** explained the felony sentencing committee has had many meetings with the Council of State Governments about the initiative. He said the plan addresses the development of probation by increasing training and resources. It works to regularize the treatment of probationers and parolees who are having difficulties. Judge Shindurling reported the rider program has been in place for several years. This valuable program is an intensive treatment modality best used to maximize the ability to keep people in the community and work with them to change behaviors without prison terms.

**Rep. Wills** congratulated **Rep. Wood (35)** who initiated the successful "Wood Court" solution in eastern Idaho. He encouraged the members of the committee to attend judicial proceedings in their areas.

In response to questions, the Administrative Judges reiterated that the Justice Reinvestment Initiative proposes a number of efforts to help reinvest dollars at the beginning of the offenders journey through the justice system. Each one of the options is determined by the individual needs of the offender. Discussion ensued on length of sentencing for prison terms and probation. Judges may sentence offenders to prison until their treatment program is completed. Because of the lack of resources, it sometimes takes longer than what was originally intended. The rider program is an alternative to prison, not to probation. It allows for further evaluation and treatment so when offenders come out of the program, the judge can review their case. The Administrative Judges concurred that society is, in effect, using the justice system to deal with the mentally ill. Crisis centers would be a benefit by giving the police a place to bring someone who is having a psychotic break. These individuals are not criminals; they are mentally ill. After two years of working on this, there is broad support for the centers which will be used for short stays to defuse crises. Currently the choice is either an emergency room or a jail.



**MOTION:**        **Rep. Packer** made a motion to approve the minutes of the Dayley subcommittee meeting of January 13, 2014. **Motion carried by voice vote.**

**ADJOURN:**      There being no further business to come before the committee, the meeting was adjourned at 2:46 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, January 27, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22400</u></a>	Alcohol Beverage Control – Probation Completion	Lt. Russ Wheatley, Idaho State Police
<a href="#"><u>RS22401</u></a>	Investigations - Requirements to the Destruction of Drugs	Maj. Kevin Hudgens, Idaho State Police
<b>Presentations</b>		
	Idaho Criminal Justice System	Brent Reinke, Director Idaho Department of Corrections
	Idaho Trial Lawyers Association	Barbara Jorden, Idaho Trial Lawyers Association

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Francoise Cleveland  
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Phone: 332-1127  
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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Monday, January 27, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Clark Rollins, ISP; Russ Wheatley, ISP; Kevin Hudgens, ISP; Charlie Spencer, ISP; Raeleen Welton, ILBA; Russell Westerberg, ILBA; Barbara Jorden, ITLA; Teresa Baker, ISP; Shane Evans, IDOC; Mike Kane, ISA; Elizabeth Criner, Pfizer

**Chairman Wills** called the meeting to order at 1:30 PM.

**RS 22400:** **Lt. Russ Wheatley**, Lieutenant with the Idaho State Police over the Alcohol Beverage Control, presented **RS 22400** which amends and clarifies Section 23-910(1), Idaho Code, relating to those persons eligible to hold a license for the retail sale of liquor by the drink. Currently, the statute reads if a person has been convicted of a felony and five years has lapsed, a person is eligible to hold a license even if they are still on felony probation. The challenge for the Idaho State Police Alcohol Beverage Control is determining who is qualified to be a licensee. The amendment would clarify that a person must wait five years to lapse after they finish their entire felony sentence, including probation, to be eligible to hold a liquor license.

**Rep. Packer** asked for clarification on page two, line 11. The number 6 is stricken from the language of the law. **Lt. Wheatley** indicated it was not their intent to strike this number.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22400**.

**Rep. Burgoyne** questioned the need to strike the number 6 from Section 6 and suggested the committee make the change before the RS is introduced.

**AMENDED  
MOTION:** **Rep. Packer** amended the original motion to introduce **RS 22400** with the following change to the strike out on page two, line 11, reaffirming the number 6.

**Rep. Luker** indicated this may be an attempt to clean up the language in the Code. There may be a need to renumber the entire legislation so it may be best to have the author make the changes.

**MOTION  
WITHDRAWN:** **Rep. Packer** withdrew the amended motion to introduce **RS 22400** with the following change to the strike out on page two, line 11, reaffirming the number 6.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22400** allowing the Idaho State Police to amend the legislation as necessary to ensure the accuracy of the language for the striking out of the number 6 in Section 6.

**Chairman Wills** asked the Idaho State Police to withdraw **RS 22400** to make the necessary changes and return to the committee at a later date with the change.

**Lt. Wheatley** indicated he would return with the proposed legislation as soon as possible.

**RS 22401:**

**Maj. Kevin Hudgens**, West Area Operations Major for the Idaho State Police (ISP), presented **RS 22401** which amends and clarifies Section 37-2744(f)(2), Idaho Code, relating to the number of persons required to witness the destruction of drugs. The statute currently requires that two representatives from the Idaho State Police be present. Maj. Hudgens stated the law was written before the Idaho State Police was responsible for Forensic Services and both a supervisory drug analyst and a representative from the Director's Office are required to be present. Now that both representatives are governed by the same agency, it is an unnecessary duplication of efforts to continue to have both as witnesses. This proposed legislation would eliminate the requirement for a Forensic Services representative. Both **Clark Rollins**, Major over ISP Forensic Services, and **Mark Johnson** from the Board of Pharmacy are supportive of this change.

In response to questions, **Maj. Hudgens** explained that between the representatives from all the agencies involved, there are as many as eight people present to ensure the destruction of the drugs without the additional member from the ISP.

**MOTION:**

**Rep. Horman** made the motion to introduce **RS 22401**. **Motion carried by voice vote.**

**Brent Reinke**, Director of the Idaho Department of Correction, presented an update on the Idaho Criminal Justice System whose mission is to promote a safer Idaho by reducing recidivism. Mr. Reinke said the department's vision is for a dedicated and committed staff who transforms lives one person, one family, one community at a time. The vision is achieved through the goals of safety first, promoting staff success, and reducing recidivism. The mission is so important to the department that each staff member wears a lanyard card to be worn with their identification badge promoting this safety-first message. The Department of Corrections, encompassing more than 1,500 employees, manages 22,500 felony offenders, 11 prisons, four community work centers, and district offices throughout the state. With the Governor's announcement to transfer the management of the Idaho Correctional Center back to the state, **Kevin Kempf**, IDOC Deputy Director, and **Jeff Zmuda**, IDOC Incident Commander, have been chosen to lead a seamless transition while still maintaining the integrity of the IDOC. This change of management will shift 2,060 beds, 25% of the current prison capacity, from contract to state management.

**Mr. Kempf** detailed the organizational structure and transition schedule for the change of management. He outlined three goals. The first goal, due by July 1, is to have on-site visits to communicate with staff about issues like employment and POST orders, and to finalize an extensive inventory process identifying state owned property. Goal number two, starting July 2, is to stabilize the populations using comprehensive statistics with a slow and steady approach. Goal number three is to provide meaningful opportunities in education, vocational education and correctional industries. **Mr. Reinke** indicated he would provide the legislature with updates every month until at least 60 days after the takeover is completed.

**Mr. Reinke** spoke about the challenge of providing medical care. Any discussion about medical care has to include the challenge of the Balla lawsuit. The lawsuit should be settled within 24 months of October 15, 2013. The reason the Balla case is important is because of how the health care contract came into being this past year. The Board of Corrections, specifically **Vice Chairman McClusky**, decided to issue a Request For Proposal for medical services to include the Idaho Correctional Center rather than allow for another rate increase. This has been a challenge due to the sheer number of inmates now included. The issues that led to the Board's decision included the difference of formularies, off-site appointment issues, a primary infirmary at the Idaho State Correctional Institution, and dialysis transfers which were hard to meet. After an extensive process with a blind bid, the Board and IDOC leadership chose the contract including the ICC for a daily

cost of \$15.31/inmate. Mr. Reinke continued his update by noting that one in four correctional officers left the agency in 2013. To combat this, there needs to be a doubling in officer training and increase in POST academies. The caseload per officer is too large. Currently, there are 79 offenders to every officer. Mr. Reinke ended his presentation with the news that the Idaho Department of Correction will celebrate 150 years this year.

**Barbara Jorden**, of the Idaho Trial Lawyers Association, presented a general overview of the association. She said it is a non-profit organization governed by a board of directors with the daily operations run by two staff members. Its membership includes attorneys, law students, and legal staff from across the state and both sides of the political aisle. Most of the attorneys in the state are small business owners; their practices only encompass one to two attorneys plus staff. Because of this, the Idaho Trial Lawyers Association offers connections between practices, communications across the state, and continuing legal education opportunities. This is so attorneys have a thorough understanding of new laws and procedures. She said because the ITLA is dedicated to ensuring all new laws are well-written, the lawyer/legislator is encouraged, and more are needed in the statehouse. The ITLA can also be a valuable resource for any legislator. They offer expertise, answer questions, and may be able to provide a different perspective on an issue.

**Ms. Jorden** observed that community service is important to the organization. They mentor both law students and young attorneys, encouraging the fact they are always representatives of their clients. The Idaho Trial Lawyers Association assists in the Street Law Clinic and the Family Law Clinic. These clinics encourage law students to meet with people who need help. They are not designed to solve problems but to show individuals where to look for help. The ITLA just launched a new website, [www.itla.org](http://www.itla.org), which includes resources to find a lawyer by location and specialization.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:33 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, January 29, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">RS22517</a>	Court Determination of Indigency	Rep. Perry
Docket No. <a href="#">11-1101-1301</a>	Rules of the Idaho Peace Officer Standards and Training Council	William Flink, POST Division Administrator
<a href="#">RS22476</a>	Amendment to the Scrap Metal Act	Rep. Malek
<a href="#">RS22564</a>	Infraction Penalties	Rep. Luker
<a href="#">RS22544</a>	Decriminalization of Land Use Violations	Rep. Luker
<a href="#">RS22545</a>	Decriminalization of Building Code Violations	Rep. Luker

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, January 29, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Dennis Tanikuni, Idaho Farm Bureau; Will Hart, ICUA; Holly Koole, IPAA; Kristyn Kibinenman, Risch-Pisca; Raeleen Welton, RMP; Russell Westerberg, RMP; Ed Hawley; Kendra Dean, Recyclers; Mike Ressler, North American Recycling; Rich Hahn; Amber Pence, City of Boise; Michael Kane, ISA; William Flink, POST; Neil Colwell, Avista Corp; Miguel Legarreta, Realtors

**Chairman Wills** called the meeting to order at 1:32 PM.

**MOTION:** **Rep. Meline** made a motion to approve the minutes of the Bateman Subcommittee meeting of January 20, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of the January 21, 2014, meeting. **Motion carried by voice vote.**

**RS 22517:** **Rep. Perry** presented to the committee **RS 22517** which certifies that a subsidy received for health care coverage through the Idaho health insurance exchange does not qualify as a factor for indigency determination in regards to the public defender system.

**MOTION:** **Rep. Luker** made a motion to introduce **RS 22517**. **Motion carried by voice vote.**

**DOCKET NO. 11-1101-1301:** **William Flink**, POST Division Administrator, presented **Docket No. 11-1101-1301**. Mr. Flink explained these Pending Rule amendments are to better define the minimum employment standards for POST Council and law enforcement agencies. The proposed amendments will assist POST in complying with the rulings of the Idaho Supreme Court by clarifying vague terms, to prevent arbitrary or discriminating enforcement of the rules, and to better prescribe standards in determining suitability for law enforcement employment. He said the second purpose of these Pending Rules is to make available to students attending POST-approved training in colleges and universities, the same due process provisions when applying for training as afforded to those individuals employed by an Idaho law enforcement agency. Mr. Flink stated, at the present time, the definition of moral turpitude has been left up to the discretion of either the POST Division Administrator and/or the POST Council. The term "moral turpitude" has been the basis of disqualification for public service and some professions throughout the history of the United States. In Idaho, the courts have only gone as far as to find "moral turpitude" as: an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Mr. Flink said the paramount purpose of the moral turpitude standard is not to punish, but to protect the public, the courts, and the profession from unsuitable practitioners.

In response to questions, **Mr. Flink** assured the committee that a Temporary Rule would be drafted to address the concerns brought to the POST by the Senate and House Judiciary and Rules Committees. **Rep. Dayley** asked that the committee be notified as to the process and completion of this Temporary Rule so they can review the Rule to ensure all their concerns were addressed. Mr. Flink affirmed that he would notify the committee. **Michael Kane**, representing the Idaho Sheriffs Association, notified the committee of their support of the Docket emphasizing the importance of adopting these Rules now because, if not, another year will pass before these corrections can be made.

**MOTION:** **Rep. Burgoyne** made a motion to approve **Docket No. 11-1101-1301. Motion carried by voice vote.**

**RS 22476:** **Rep. Malek** presented to the committee **RS 22476** which amends the Scrap Metal Act. **RS 22476** will reduce the circumstances by which a felony charge may be imposed on scrap metal dealers, clarify the definition of scrap metal dealers, and provide for more specific detail on the circumstances by which a scrap metal dealer must make video or photographic images when they purchase non-ferrous metals. Rep. Malek stated it also provides reasonable protections for scrap metal businesses when they purchase nonferrous metal from the general public when ownership of the material cannot be verified and clarifies the duration of records retention.

**MOTION:** **Rep. Nielsen** made a motion to introduce **RS 22476. Motion carried by voice vote.**

**RS 22564:** **Rep. Luker** presented to the committee **RS 22564** which will update Idaho law concerning infraction penalties. Currently the law gives the Supreme Court the authority to set infraction penalties. He said this amendment would restore that function to the legislature except where discretionary sentencing is specifically given to the courts. It will also increase infraction penalty limits to \$300 from \$100 to allow for more flexible use of infractions instead of misdemeanors. Misdemeanors can impose jail time and gives the defendant a right to a jury trial. Rep. Luker stated because the Supreme Court has defined the right to a public defense as someone who is facing jail time, this change will reduce the cost and work load by public defenders. This proposed legislation has been reviewed by the Public Defender Task Force who voted to support it.

**MOTION:** **Rep. Trujillo** made a motion to introduce **RS 22564. Motion carried by voice vote.**

**RS 22544:** **Rep. Luker** presented to the committee **RS 22544** which decriminalizes land use violations, making them infractions instead of misdemeanors.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22544. Motion carried by voice vote.**

**RS 22545:** **Rep. Luker** presented to the committee **RS 22545** which decriminalizes building code violations, making them infractions instead of misdemeanors.

**MOTION:** **Rep. Meline** made a motion to introduce **RS 22545. Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:51 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary



AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, February 03, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22614</u></a>	Government Liability	Rep. Morse
<a href="#"><u>RS22466</u></a>	Divorce Actions, Parenting Coordinator	Hon. Michael Dennard
<a href="#"><u>RS22467C2</u></a>	Protection of Persons, Guardianship and Conservatorship	Hon. Michael Dennard
<a href="#"><u>RS22400</u></a>	Alcohol Beverage Control-Probation Completion	Lt. Russ Wheatley
<a href="#"><u>RS22478C1</u></a>	Wage Garnishment Service	John Watts, on behalf of the Idaho Collectors Assn.
<a href="#"><u>RS22651</u></a>	Inattentive Driving	Rep. Trujillo
 <b>Presentation</b>		
	Idaho Criminal Justice Commission Annual Overview	Sara Thomas, Chair Idaho Criminal Justice Commission

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Monday, February 03, 2014

**TIME:** 1:30 PM

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Horman, Nielsen

**GUESTS:** Michael Dennard, Supreme Court; Holly Koole, IPAA; Russell Westerberg, AMOI; Charlie Spencer, ISP; Russ Wheatley, ISP; Teresa Baker, ISP; Kristen Atwood, ICRMP, ISA; Monty Prow, ICJC; Sharon Harrigfeld, ICJC; John Eaton, Realtors; Angela Richards, Allstate; John Watts, Collectors Assn.; Woody Richards, American Family

**Chairman Wills** called the meeting to order at 1:30 PM.

**RS 22614:** **Rep. Morse** presented to the committee **RS 22614**, which adds government liability exceptions for activities upon state endowment lands for the use of any road, trail, easement, or for woodcutting activities. Rep. Morse, in research for a constituent, found there are no existing exceptions to government liability when individuals travel across state endowment lands. He said without this provision, the state is requiring land users to acquire expensive insurance liability policies.

In response to questions, **Rep. Morse** indicated this exception would not limit liability of individuals from fire damage. It was also his intention to focus on third party activities and immunize any claims from those against the state. It is not his intention to immunize the state from liability from its own actions. He said the current problem is the state is liable for claims or tort actions from harm that comes from improper design, lack of maintenance, or other such issues.

**MOTION:** **Rep. Burgoyne** made a motion to return **RS 22614** to the sponsor. **Motion carried by voice vote.**

**RS 22466:** **Hon. Michael Dennard**, Senior Judge and Senior Manager of Court Services for Children and Families at the Administrative Office of the Courts, presented **RS 22466** to the committee. This proposed legislation would amend Idaho Code, Section 32-717D, to give the court the discretion to award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. This statute authorizes the appointment of a parenting coordinator in child custody and visitation disputes. The coordinator would assist the parties in resolving those issues, or make certain decisions or recommendations when the parents are unable to agree. Judge Dennard said this amendment would serve to promote stability for the family, minimize the impact on the parent's resources, and provide some deterrent against the filing of needless motions.

**MOTION:** **Rep. Bolz** made a motion to introduce **RS 22466**. **Motion carried by voice vote.**

**RS 22467C2:** **Hon. Michael Dennard**, Senior Judge appearing on behalf of the Idaho Supreme Court, presented to the committee **RS 22467C2**, which eliminates the current statutory language for reporting requirements for guardians and conservators. It replaces this language with an obligation to comply with the reporting and inventory requirements as defined by court rules. Sections 1, 2, 5, and 7 describe the specific amendments to accomplish this transfer for guardians of minors and incapacitated adults, conservators for minors and incapacitated adults, and guardians and conservators for persons with developmental disabilities. He said this proposed legislation also clarifies that when a court employee is used to prepare a visitor's report in a guardianship proceeding, any cost recovered from the parties for that report should be deposited into the Guardianship and Conservatorship Project Fund.

**MOTION:** **Rep. Burgoyne** made a motion to introduce **RS 22467C2**. **Motion carried by voice vote.**

**RS 22400C1:** **Lt. Russ Wheatley**, of the Idaho State Police over the Alcohol Beverage Control Unit, presented **RS 22400C1** to the committee. Currently the subsection of Idaho Code speaks to several triggers to start a five-year waiting period for an individual who has been convicted of a felony. The challenge for the licensing staff is to figure out when that five year waiting period starts. Lt. Wheatley explained that a Legislative Services Code Editor struck the number 6 in the proposed legislation so the last sentence of the Code would be used to apply to the entire section above. The change that has occurred since the last presentation of the RS is to add parole to the language.

In response to a question, **Lt. Wheatley** indicated this law would not be made retroactive. He also clarified any probation and parole term would have to be completed before the five year waiting period for the liquor license would start.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22400C1**. **Motion carried by voice vote.**

**RS 22478C1:** **John Watts**, on behalf of the Idaho Collectors Association, presented **RS 22478C1**, which amends and adds to existing law regarding service procedures for wage garnishment. According to law, only county sheriffs can serve wage garnishments. Today, clerical staff, through the US Postal Service, administers the majority of these garnishments. Through this policy change, serving attorneys would be allowed to use something other than a Sheriff for wage garnishment. He said this does not disturb current policy nor law regarding attachment nor bank garnishment. It also allows for transparency in the exemptions for the judgment debtor thereby allowing less income considered for garnishment. It establishes a set of procedures and penalties for a serving attorney who fails to turn money over. Mr. Watts noted a flat fee of \$40 plus an additional \$5 for additional garnishments would be charged.

In response to a question, **Mr. Watts** said this gives the creditor a choice but the judgment debtor's recourse would remain the same. The only change for the debtor is with whom they work.

**MOTION:** **Rep. Trujillo** made a motion to introduce **RS 22478C1**. **Motion carried by voice vote.**

**RS 22651:** **Rep. Trujillo** presented to the committee **RS 22651** which allows for the prosecution of a person who causes danger to persons or property when the operator knowingly operates a vehicle with a known medical condition that is not being properly treated.

**MOTION:** **Rep. Bateman** made a motion to introduce **RS 22651**.

Several members of the committee expressed concern that the language "not properly treated" was too broad and wondered how the prosecutor would know about an untreated medical condition.

**VOTE ON  
MOTION:**

**Motion carried by voice vote.**

**Sara Thomas**, Chair of the Idaho Criminal Justice Commission, updated the committee regarding the commission's activities in 2013. She said the Idaho Criminal Justice Commission is committed to a collaborative effort to address important criminal justice issues and challenges by developing and proposing balanced solutions. These solutions are goaled to be cost effective and based on best practices to achieve a safer Idaho. This collaboration encompasses all branches and levels of the government as well as private citizens.

**Ms. Thomas** said the Results First Project is one way the Idaho Criminal Justice Commission provides policy makers and criminal justice decision makers with accurate information to improve public safety and the efficient use of public resources. The Results First project is a computer model that allows the programming provided to convicted persons be evaluated for both cost effectiveness and success. These results will be one tool in determining what types of programming will be offered in Idaho.

**Ms. Thomas** reported that the Commission has worked on legislation addressing public defense issues, juveniles' right-to-counsel, and human trafficking. They have also worked with the Sexual Offender Management Board in writing their standards. Because Idaho's current criminal justice efforts and initiatives require clear strategic planning and continued coordination, a three-year strategic plan was reviewed, modified, and adopted. In that, they identified priorities on which Idaho as a whole should be focusing. The Grant Review Council has been able to prioritize money coming from the federal government on those issues the Criminal Justice Commission has acknowledged as important.

**Ms. Thomas** explained the Misdemeanor Probation Treatment Services Subcommittee which funds treatment services for those on misdemeanor probation. She said the grant money for this program is due to expire in 2014. The commission agreed that members of the subcommittee should seek a no-cost extension of the Access to Recovery grant funds for the supervision of misdemeanor probationers. They tasked this subcommittee to strategically identify the next steps to methodically identify a plan to sustain substance abuse treatment as a long-term solution. This subcommittee will continue to work on developing data, outcomes, and strategies for moving forward beyond the no-cost extension.

**Ross Mason**, Regional Director of the Department of Health and Welfare and Chair of the Children of Incarcerated Parents (COIP) subcommittee of the Idaho Criminal Justice Commission, spoke about the committee's mission of improving the lives of children whose parent or parents are incarcerated for an extended period of time. Specifically, he summarized the 2012-2013 COIP Pilot Project. The pilot was designed to help socialize these children by giving them the tools they need to help in school while the absent parent is in prison. Mr. Mason said they focused on three areas: attendance, academics, and behavior. They observed that at-home behavior improved substantially; all students in the pilot were working at grade level; and, school attendance improved slightly. Parents and children universally felt the program was valuable and worthwhile.

**Monty Prow**, member of the Idaho Criminal Justice Commission's Criminal Justice Research Alliance Subcommittee, spoke on the Idaho Data Sharing Service Project. The Idaho project, to be implemented in the Fall of 2014, aims to create a secure, common sharing platform for the partners who interact with justice-involved juveniles. The Idaho Criminal Justice Commission has ad-hoc agreements with other agencies but current data technology make it costly and inefficient to share information. Using grant money, they are working on a process for the independent computer information systems to communicate with each other. This is not a data warehouse; the information flows back and forth.

**Sara Thomas** concluded the presentation of the Idaho Criminal Justice Commission with their priorities for the next year: to guide Idaho's response to the Prison Rape Elimination Act, to reclassify misdemeanors, to review sex offender registration categories, and review fines and fees.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:54 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, February 05, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS22698</u></a>	Penalties for Crimes Against Elderly	Rep. Kauffman
<a href="#"><u>RS22652</u></a>	Continuation of Interim Public Defender Study Committee	Rep. Bolz
<a href="#"><u>RS22653</u></a>	Establishing State Public Defender Commission	Rep. Bolz
<a href="#"><u>RS22549</u></a>	Victim Notification Fees	Michael Kane, Idaho Sheriffs Assn.
<a href="#"><u>RS22550</u></a>	State Prisoners in County Jails	Michael Kane, Idaho Sheriffs Assn.
<a href="#"><u>RS22592</u></a>	Evidence of Safety Restraint	Michael Kane, Property and Casualty Insurers Assn. of America
<a href="#"><u>RS22656</u></a>	Medical Treatment For Children	Rep. Gannon
<a href="#"><u>RS22612</u></a>	Molestation	Rep. Malek
<a href="#"><u>RS22800</u></a>	Revenge Pornography	Rep. Malek
<a href="#"><u>RS22487C1</u></a>	24/7 Sobriety Program	Rep. Malek
<a href="#"><u>RS22718</u></a>	Ski Areas Responsibilities	Rep. Malek
<a href="#"><u>RS22746</u></a>	Decriminalization of Building Code Violations	Rep. Luker
<a href="#"><u>RS22732</u></a>	Health and Welfare Consultation for Removal of Child	Rep. Perry
<a href="#"><u>RS22733</u></a>	Juvenile Proceedings, Shelter Care	Rep. Perry
<a href="#"><u>RS22802</u></a>	Inattentive Driving	Rep. Trujillo
<a href="#"><u>RS22449C1</u></a>	Amendment to House Rule 74, Attaches	Rep. Wills
	<b>Presentation:</b> Lowering the Amount of Methamphetamine to be Considered for Drug Trafficking	Toef Leija Murtaugh High School Student

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 05, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo (Jordan)

**ABSENT/  
EXCUSED:** Representative(s) Burgoyne

**GUESTS:** Skip Smyser, Idaho Ski Area Assn; Daniel Chadwick, Idaho Assn of Counties; Paul Jackson, Farmers Insurance; Russell Westerberg; Woody Richards, Insurance Companies; Lyn Darrington, State Farm Insurance Co.; Ken Howard, AIC; Amber Pence, City of Boise; Rob Luce, Department of Health and Welfare; Barbara Jorden, ITLA; Madilynn Lee Taylor, MCC; Kristyn Kirschenman, Risch-Pisca; Mike Kane, ISA; Mike Kane, PCI; Elli Brown, Veritas Advisors; Angie Richards, Allstate, American Family, Farm Bureau; Jason Kreizenbeck, Lobby Idaho; Elizabeth Roberts, Ben Wilson, John Grubbs, Citizens

**Chairman Wills** called the meeting to order at 1:33 PM.

**Chairman Wills** welcomed to the committee **Rep. Jordan** who is filling in for **Rep. Ringo**.

**RS 22698:** **Rep. Kauffman** presented **RS 22698** to enhance penalties for persons convicted of felony violations against older persons which are defined as 65 years of age or older. **Rep. Kauffman** stated that according to the National Institute of Justice, one in ten older Americans or about five million individuals are believed to experience abuse every year. Elder abuse can occur in many different forms including financial exploitation, fraud, physical or emotional abuse, and neglect by a care giver. Fiscal impact cannot be determined at this time because there are currently no mechanisms for gathering data on the number of cases involving elder abuse. In addition, prosecutors will have the discretion of whether to prosecute these crimes with the enhanced penalty.

**MOTION:** **Rep. Nielson** made a motion to introduce **RS 22698**. **Motion carried by voice vote.**

**RS 22652:** **Rep. Bolz** presented to the committee **RS 22652** which authorizes Legislative Council to appoint an interim study committee to complete a study of the public defender system. This committee will continue the work from the 2013 Interim Committee which looked at Idaho's duty to public defense as required by the 6th Amendment to the U.S. Constitution. He said there are several issues that still need to be resolved. This includes standards, what role municipalities will play, and what mechanisms are needed to have a constant, stable, continuing funding source for the public defenders in Idaho.

**MOTION:** **Rep. Luker** made a motion to introduce **RS 22652**. **Motion carried by voice vote.**

- RS 22653:** **Rep. Bolz** presented to the committee **RS 22653** which provides for the establishment of a State Public Defender Commission under the Idaho Department of Self Governing Agencies. The Commission will consist of seven members and would be asked to report to the legislature annually. Rep. Bolz explained this will start the reform proposed by the 2013 Public Defense Interim Committee. The proposed legislation outlines the powers and duties of the Commission, including rules and training. It also provides for a uniform reporting requirement from counties. Rep. Bolz said it authorizes the establishment of a State Public Defense Commission Fund providing for two separate funding entities, one for training and one for the commission itself. The fiscal impact is \$300,000; \$105,000 of this money is to be used for training purposes only. The current county practice of flat fee contracts is not constitutional. These will no longer be allowed; however, current contracts will be honored until completion.
- MOTION:** **Rep. Trujillo** made a motion to introduce **RS 22653. Motion carried by voice vote.**
- RS 22549:** **Michael Kane**, of the Idaho Sheriffs Association, presented **RS 22549** which is to establish sustainable funding for the statewide witness notification system, known as VINE. Mr. Kane said this successful electronic system assists prosecutors and correctional agencies in fulfilling their constitutional duty to assure the victims of crime are notified of changes in the status of offenders. The fee for those charged with felonies and misdemeanors would be increased to \$15 from \$10. There were over 100,000 notifications to Idahoans last year.
- MOTION:** **Rep. Meline** made a motion to introduce **RS 22549. Motion carried by voice vote.**
- RS 22550:** **Michael Kane**, of the Idaho Sheriffs Association, presented **RS 22550** which increases the daily rate for state sentenced prisoners housed in the county jails from \$40 a day to \$50 a day. This adjustment to the daily rate is needed so that the county property taxpayers will not have to make up the cost difference in housing state prisoners. This number has not been increased in 14 years. In comparison, currently there are 250 Idaho prisoners housed in Colorado at a daily rate of \$57. These programs have allowed the state to avoid building another prison. He gave an example for the fiscal component of the bill, if one assumes there are 600 daily prisoners for 365 days, the impact will be 2.17 million dollars.
- MOTION:** **Rep. Horman** made a motion to introduce **RS 22550. Motion carried by voice vote.**
- RS 22592:** **Michael Kane**, with the Property and Casualty Insurers Association of America, presented **RS 22592** which will modify the law that prevents a jury from learning that a person who is a plaintiff in a personal injury action, stemming from an automobile accident, failed to wear a seat belt. Mr. Kane clarified that only under very limited conditions would the jury be informed that a person was not using their seat belt. These certain conditions must be in place. The court must hold a hearing before the insurance industry is allowed to speak about it to the jury. There must be clear and convincing evidence, which is the highest burden that exists in civil law, that the person was more injured because they did not wear their seat belt. This would only effect third party claims and it will not penalize children as long as they are under the legal driving age.
- MOTION:** **Rep. Perry** made a motion to introduce **RS 22592. Motion carried by voice vote.**
- RS 22656:** **Rep. Gannon** presented to the committee **RS 22656** which modifies Section 4 of the Injury to Children Statute by providing that medical treatment must be sought in cases where a child may die or suffer permanent injury. This proposed legislation changes the faith healing exemption in the Code so parents will be motivated to provide basic medical services when the child is in danger of death or permanent impairment. Rep. Gannon said the actions of the parents are still subject to the willful provisions of the injury statute.



**MOTION:** **Rep. Meline** made a motion to introduce **RS 22656. Motion carried by voice vote.**

**RS 22612:** **Rep. Malek** presented to the committee **RS 22612** which articulates criminal liability for an individual who molests another using forcible sexual penetration by use of a foreign object when the victim is asleep or unconscious at the time. This proposed legislation closes the loophole for victims who cannot prove that a violation made was against their will.

**MOTION:** **Rep. Bateman** made a motion to introduce **RS 22612. Motion carried by voice vote.**

**RS 22800:** **Rep. Malek** presented **RS 22800** which would change the current video voyeurism law in Idaho Code. The law is narrowly tailored to combat the sharing of images that are used for sexual gratification, when there is not consent to do so. The proposed legislation would provide protections against the usage of pictures or videos of an intimate or private nature that are shared without consent, for purposes other than sexual gratification such as revenge, extortion, or humiliation.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22800. Motion carried by voice vote.**

**RS 22487C1:** **Jason Kreizenbeck** of Lobby Idaho, LLC, presented **RS 22487C1** which would create a statewide voluntary 24/7 Sobriety and Drug Monitoring Program to be administered by the Attorney General. With statewide uniform standards provided by the Attorney General, this is an opt-in program for the counties. This is also an offender-pay program requiring the cost of testing to be paid at the time of each test.

In response to a question, **Mr. Kreizenbeck** stated this would be a new duty for the Attorney General. The Attorney General would write the rules and ensure county compliance with the program.

**MOTION:** **Rep. Trujillo** made a motion to introduce **RS 22487C1. Motion carried by voice vote.**

**RS 22718:** **Skip Smyser**, Lobby Idaho, LLC, presented **RS 22718** which will amend the Ski Liability Act to modernize the terms skiers, terrain park, inherent risks in skiing to include terrain park, snow immersions and inbound avalanches. The original legislation was passed in 1979. Since then, the ski hill has become a year-round activity center. This modernization of language is intended to recognize the current usage of the ski hills. This would not impact any ongoing litigation.

**MOTION:** **Rep. Dayley** made a motion to introduce **RS 22718. Motion carried by voice vote.**

**RS 22746:** **Rep. Luker** presented **RS 22746** to the committee which decriminalizes building code violations, making them infractions instead of misdemeanors, and providing for a flagrant, violator misdemeanor. This is the same proposed legislation previously looked at by this committee with the addition of Subsection 4 for the flagrant violator.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22746. Motion carried by voice vote.**

**RS 22732:** **Rep. Perry** presented **RS 22732** which makes changes to the Idaho Child Protection Act. Currently, a child may be taken into shelter care by a police officer without a court order if the officer believes prompt removal is necessary to prevent serious physical or mental injury to the child. Rep. Perry indicated the Act is very vague in regards to what actually constitutes serious physical and mental injury. It places the decision in the hands of only one person. There is relatively little training in this area for law enforcement officers; whereas, social workers with the Idaho Department of Health and Welfare have had substantial training in this area. This legislation would require a peace officer to consult with the Idaho Department of Health and Welfare's Child Protection Division before declaring a child in imminent danger and taking them into state care. It is designed to prevent unnecessary trauma to children and expense by the state.

**Rep. Perry** responded to a question regarding the officers right to remove a child saying it does not take away the authority from the officer. It only requires them to consult. The police officer can still make the determination. In response to a question regarding how long the consult would take and how the law enforcement officer would know where to call, **Robert Luce**, Idaho Department of Health and Welfare Division Administrator over Family and Community Services, explained they instituted a Centralized Intake Unit in Idaho last year. All child protection cases come through this center which is open 24 hours, seven day a week. All law enforcement has the number to the center and their wait time is 10 to 20 seconds. Currently, more than 50% of this type of consult is occurring; they are trying to capture the rest. There is no penalty if the recommendation is not followed and the idea is to standardize the front door to child protection across the state.

**MOTION:** **Rep. Nielson** made a motion to introduce **RS 22732**. **Motion carried by voice vote.**

**RS 22733:** **Rep. Perry** presented **RS 22733** which will revise the timing of shelter care hearings for a child declared in imminent danger. This change is designed to lessen the number of children taken into shelter care by allowing the Idaho Department of Health and Welfare, Child Protective Unit, ample time to preform a proper investigation. This would ensure children are taken into custody only when facts dictate it to be absolutely necessary. Currently, the statute reads the hearing must take place within 48 hours, excluding holiday and weekends. In practice, these hearings are usually held within 24 hours. **Rep. Perry** explained the data reflects that holding hearings too early holds the social worker at a disadvantage. More children are being kept in custody. This is at a traumatic cost to the child and the state. This proposed legislation will specify that a hearing can be held no earlier than the second judicial working day and no later than the third. This still keeps flexibility in place for the court system while allowing for the social worker to make a better determination for the child. The goal is to protect the child and family from unnecessary trauma.

**MOTION:** **Rep. Malek** made a motion to introduce **RS 22733**. **Motion carried by voice vote.**

**RS 22802:** **Rep. Trujillo** presented **RS 22802** to the committee which relates to reckless-inattentive driving. The proposed change allows for the prosecution of a person who causes danger to persons or property when the operator knowingly operates a vehicle with a medical condition that is not properly treated. This RS will replace **H 450**. This updated legislation has been modified to reflect suggestions made from committee members.

**MOTION:** **Rep. Packer** made a motion to introduce **RS 22802**. **Motion carried by voice vote.**

**UNANIMOUS  
CONSENT  
REQUEST:** **Rep. Trujillo** made a unanimous consent request to **HOLD H 450** in committee. There being no objection, the request was granted.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**RS 22449C1:** **Rep. Wills** presented **RS 22449C1** which will update House Rule 74 which deals with the selection, removal, duties and compensation of attaches. It will update the rule to reflect current House practice of allowing the Speaker to select attaches and determine their compensation.

**MOTION:** **Rep. Bateman** made a motion to introduce **RS 22449C1**. **Motion carried by voice vote.**

**Vice Chairman Luker** returned the gavel to **Chairman Wills**.

**Toef Leija**, a Murtaugh High School Student, presented to the committee information on methamphetamine (meth). He stated that according to Idaho Statute, any person who knowingly manufactures or attempts to manufacture meth shall be convicted of a felony. Meth releases a surge of dopamine and over time the dopamine receptors make it impossible to feel pleasure naturally. Certain behaviors like paranoia, insomnia, anxiety, extreme aggression, delusions, and hallucinations are experienced by meth users. Meth can have other affects like an increased heart rate, lower resistance to illness, liver damage, meth mouth, convolutions, stroke or death. Mr. Leija explained the current law states that anyone with 28 grams but less than 200 grams shall be sent to a mandatory fixed term of imprisonment for three years and fined no less than \$10,000. If a person carries 200 grams or more but less than 400 grams, a person shall be sentenced to a mandatory minimum of five years and fined no less than \$15,000. If a person carries 400 grams or more, a person shall be sentenced to a mandatory fixed term of 10 years and fined no less than \$25,000. The maximum number of years for imprisonment for trafficking in meth is life and the maximum fine shall be \$100,000. Mr. Leija said the changes he would like to see is for the amount of meth in grams to be lowered from 28 to five. Children's lives should not be destroyed because of drug traffickers. More children are dropping out of schools and joining gangs because they believe drugs will help them in the long term. Mr. Leija would like to see the distribution of meth reduced to a minimum in the state of Idaho. He believes that if Idaho changes the amount of grams to be considered drug trafficking, it would eliminate meth as much as possible.

**Chairman Wills** announced a tentative date for the State Penitentiary tour for February 25. The tour of the Juvenile Correctional Facility will occur next year.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 3:03 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Tuesday, February 11, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1214</u></a>	Magistrate Division Proceedings	Michael Henderson, Legal Counsel Idaho Supreme Court
<a href="#"><u>S 1215</u></a>	Child Protection Act	Michael Henderson, Legal Counsel Idaho Supreme Court
<a href="#"><u>H 422</u></a>	Investigations - Requirements to the Destruction of Drugs	Maj. Kevin Hudgens, Operations Major Idaho State Police
<a href="#"><u>H 448</u></a>	Alcohol Beverage Control — Probation Completion	Lt. Russ Wheatley, Alcohol Beverage Control Idaho State Police
<a href="#"><u>H 0433</u></a>	Amendment to the Scrap Metal Act	Rep. Malek

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo(Jordan)
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, February 11, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Kendra Neely, Scrap Dealers; Mik Cataldo, Scrap Dealers; Clark Rollins, ISP; Charlie Spencer, ISP; Kevin Hudgens, ISP; Teresa Baker, ISP; Russ Wheatley, ISP; Michael Henderson, Supreme Court; Woody Richards, Insurance Companies; Angie Richards, Insurance Companies; Dennis Tanikuni, Idaho Farm Bureau; Rich Hahn, Idaho Power; Sean Ellis, Capital Press; Will Hart, Idaho Consumer Owned Utilities; Raeleen Welton, RMP/ILBA

**Chairman Wills** called the meeting to order at 1:32 PM.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 23, 2014, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of the January 27, 2014, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the January 29, 2014, meeting. **Motion carried by voice vote.**

**S 1214:** **Michael Henderson**, Legal Counsel for the Idaho Supreme Court, presented to the committee **S 1214**, which deletes the statement that the court "can give no charge to the jury." He said this statute dates back to 1864 and is now out of date and in conflict with other provisions of Idaho Code. The charge to the jury is the court's instruction to the jury on the laws relevant to the trial. He said without this guidance, juries could not properly deliberate and reach a verdict in a criminal case.

**MOTION:** **Rep. Nielson** made a motion to send **S 1214** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielson** will sponsor the bill on the floor.

**S 1215:** **Michael Henderson**, Legal Counsel for the Idaho Supreme Court, presented to the committee **S 1215** which corrects an erroneous statutory reference in Idaho Code Section 16-1622(2)(a) in describing the information that is required for a permanency plan. This is the plan that guides the long term placement of a child who has been found to be abused, neglected, or abandoned, and who has been placed in the custody of the Department of Health and Welfare.

**MOTION:** **Rep. Burgoyne** made a motion to send **S 1215** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Ringo** will sponsor the bill on the floor.

**H 422:** **Maj. Kevin Hudgens**, Idaho State Police Operations Major, presented **H 422** relating to the number of persons required from the Idaho State Police to witness the destruction of drugs. Current law requires representatives from the Board of Pharmacy, Forensics Services, and the Idaho State Police to witness the destruction of drugs. Now that the Forensic Services is governed by the Idaho State Police, it is an unnecessary duplication of efforts to continue to have them as a witness. In addition to the statutory required witnesses, the Idaho State Police has additional personnel who also ensure the integrity and security of the drug destruction process.

**MOTION:** **Rep. Dayley** made a motion to send **H 422** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.

**H 448:** **Lt. Russ Wheatley**, of the Idaho State Police's Alcohol Beverage Control, presented **H 448** which clarifies that a person, in order to be eligible to hold a liquor license, must wait for five years to lapse after they finish their entire felony sentence, including probation and parole. Idaho Code 23-910(1) is clear that a person is not qualified to hold a liquor license until five years after they have satisfied conditions of a felony conviction such as a term of confinement or being granted a withheld judgment. What is not clear is when the five year period begins for individuals sentenced to probation or parole. **H 448** clarifies that the five year waiting period begins upon completion of a sentence of probation or parole.

Some members of the committee expressed concerns about how this change would affect those who are currently serving their sentence. They believe this to be an additional penalty to the offender's sentence. In addition, it was questioned whether this additional five years was giving credence to a successful probation. **Lt. Wheatley** responded that the view of probation is an extension of the term of confinement, a test to see how they are going to do in society. He reminded the committee that parole is not addressed in the current legislation and needs to be added.

Other members of the committee argued **in support** of the legislation. They argued that liquor licenses should not be granted to those who are convicted of egregious crimes until their probation is complete and the trial period is over to see if they have cleaned up their behavior. Someone who holds a liquor license should be someone the state holds in high trust.

**MOTION:** **Rep. Trujillo** made a motion to send **H 448** to the floor with a **DO PASS** recommendation.

Discussion followed regarding the type and severity of felonies and whether five years after the sentence was too long of a punishment for all cases.

**SUBSTITUTE MOTION:** **Rep. Perry** made a substitute motion to **HOLD H 448** in committee.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** Roll call vote was requested. **Substitute motion failed by a vote of 8 AYE and 9 NAY.** **Voting in favor** of the motion: **Reps. Luker, Nielsen, Bateman, McMillan, Perry, Sims, Meline, and Ringo.** **Voting in opposition** to the motion: **Reps. Bolz, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, and Wills.**

**ROLL CALL VOTE ON ORIGINAL MOTION:** Roll call vote was requested on the original motion to send **H 448** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 10 AYE and 7 NAY.** **Voting in favor** of the motion: **Reps. Bolz, Bateman, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, and Wills.** **Voting in opposition** to the motion: **Reps. Luker, Nielsen, McMillan, Perry, Sims, Meline, and Ringo.** **Reps. Burgoyne and McDonald** will sponsor the bill on the floor.

**H 433:** **Rep. Malek** informed the committee that legislative services will be rewriting **H 433**. The legislation will be given a new RS number.

**UNANIMOUS  
CONSENT  
REQUEST:** **Rep. Malek** made a unanimous consent request to **HOLD H 433** in committee. There being no objection, the request was granted.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:24 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Thursday, February 13, 2014**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 466</a>	Inattentive Driving	Rep. Trujillo
<a href="#">H 434</a>	Infraction Penalties	Rep. Luker
<a href="#">H 435</a>	Decriminalization of Land Use Violations	Rep. Luker
<a href="#">H 463</a>	Building Code Violations	Rep. Luker
	Presentation: Successes of the Idaho State Police	Colonel Ralph Powell, Director Idaho State Police

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 13, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** Michael Garner, City of Boise; Steve Rutherford, City of Boise; Bill Nary, City of Meridian; George Gutierrez, Crime Victims Comp; Scott Spjute, Boise City; Kristyn Kirenenman, Risch-Pisca; Raeleen Welton, RMO; Amber Pence, City of Boise; Monica Hopkins, ACLU; Ken Harward, AIC; Pat Tucker, Idaho Falls citizen; John Foster, IDABO (Kestrel West); Russell Westerberg, Boise City; Lynn Darrington, State Farm Insurance Company

**Chairman Wills** called the meeting to order at 1:32 PM.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 5, 2014, meeting. **Motion carried by voice vote.**

**H 466:** **Rep. Trujillo** presented **H 466** which allows for the prosecution of a person who causes danger to persons or property when the operator knowingly operates a vehicle with a medical condition that is not being treated. She said when an accident involves damage to property or a person, more attention needs to be paid to the reason behind these damages. It needs to be determined if it was truly an accident or was careless behavior on the part of the driver.

**Pat Tucker**, of Idaho Falls, testified before the committee **in support of H 466**. Her daughter, **Cady Tucker**, died on August 15, 2002, in an accident caused by a long-term diagnosed, insulin dependent, diabetic driver with uncontrolled blood sugar levels. The driver was never charged nor ticketed for the accident because of the difficulties of charging when the cause is an untreated medical condition. **H 466** would make all the difference because if the standard set forth by the legislation had been in place, Cady would be alive today. It would hold people with untreated medical conditions accountable for their actions and would put people on notice if they have an untreated medical condition, to be responsible and not to drive unless they are fit for driving. She said according to the CDC by 2050 one-third of the U.S. population will have diabetes. She quoted Idaho Falls Police Sergeant, **Dave Frei**, as saying that diabetic drivers are worse than drunk drivers because they are virtually unconscious.

In response to questions from the committee, **Rep. Trujillo** said people would be liable only if they were not treating. This would be so, even if they don't have the resources to do so. **Rep. Malek** indicated that criminal liability for driving with an untreated medical condition would be incurred whether by negligence or simply because they failed to treat because they were busy that morning and forgot to take their medication. He said it is a balancing test: is the access to transportation more important than human lives? Other members mentioned that driving is a privilege not a right.

**MOTION:** **Rep. Malek** made a motion to send **H 466** to the floor with a **DO PASS** recommendation.

Members of the committee commented that the object of this legislation is to be a deterrent. Sometimes our laws serve an important function by informing people what society expects. If the language is in the Code, then people will start to pay attention.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Reps. McMillan and Sims** requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

**H 434:**

**Rep. Luker** presented to the committee **H 434** which updates and upgrades Idaho law concerning infraction penalties. This law would increase the infraction penalty maximum from \$100 to \$300. It also changes the manner in which fines are set by giving fine-setting authority to the Legislature, except where discretionary sentencing is specifically given to the courts. This legislation also provides cities and counties flexibility in using infraction penalties rather than misdemeanors in punishing ordinance violations. Because the infraction penalties are retained at their current levels, this legislation would be revenue neutral. Rep. Luker explained there is a need for this legislation due to concerns in our state regarding the public defender's cost and amount of work. Part of the overburden comes from a proliferation of misdemeanors. Due to the U.S. Supreme Court's definition of the right to jury trial and the right to public defense, any offense that carries a potential for jail time entitles someone to public defense, as long as they qualify financially. So this is attempting to set a transition from a low level misdemeanors to infractions thereby allowing public defenders more time to give their attention to those that may need it more.

In response to a question, **Rep. Luker** said this legislation would give cities and counties greater flexibility to use the infraction as a tool for setting an appropriate fine for an ordinance they are trying to enact.

**MOTION:**

**Rep. Neilsen** made a motion to send **H 434** to the floor with a **DO PASS** recommendation.

**Steve Rutherford**, City of Boise, testified in favor of the bill saying that cities across the state are looking at ways to convert misdemeanors to infractions. They support this kind of step as a foundation. In response to a question, Mr. Rutherford indicated that \$300 would be an adequate amount to charge people. He said \$300 is a lot of money for many people especially if you add court costs and fees.

**Monica Hopkins**, executive director of the ACLU of Idaho, asked the committee to hold the bill. She said because this bill raises the infraction level without a corresponding move of misdemeanors to infractions, it might actually have the opposite effect than intended on the existing public defense system.

In response to a question, **Rep. Luker** confirmed that the infraction penalties would remain the same until the Legislature acts; it is only the maximum threshold that changes.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

**Chairman Wills** turned the gavel over to **Rep. Bolz**.

**H 435:**

**Rep. Luker** presented to the committee **H 435** which decriminalizes land use violations. In Section 1, the existing law which states that the enforcement of the issue can be by infraction or misdemeanor is struck and replaced by the infraction language. He said there is an important civil compliance portion added that allows city or county enforcement actions. Currently, there is a reimbursement provision in law that can place a lien on the property for the removal costs. Misdemeanors are criminal offenses. He asked, if an individual has a messy yard or a zoning violation, should they be charged or convicted of a criminal offense?

Several members of the committee expressed concern regarding how much of a deterrent for habitual offenders an infraction would be compared to a misdemeanor. Concern was also expressed regarding the protection of land value if the violations were not taken care of appropriately. It was also discussed whether this change would be crippling to smaller developers whereas larger corporations may look at this as merely being a cost of business.

**Michael Garner**, Code Enforcement Officer for the City of Boise, testified **in opposition to H 435** the reduction of penalties for violations of zoning. He said misdemeanors are rare occurrences. Typically, all other avenues are exhausted before looking at these criminal options. Infraction threats may not be a big enough deterrent to aid enforcement officials. In Boise, there are five officers who cover more than 2,000 cases per year. Less than 20 are cited because they are able to negotiate with owners and tenants. They do this through warning levels, notice of violation, and threat of citation. Calls are received daily regarding dangerous situations or the potential for diminished property value. Without citation authority, the clean up would not happen.

In response to a question, **Mr. Garner** explained the process for the City of Boise. He said it was a "knock and talk" process. They explain to the violator why a problem exists then the offender is given a warning. If the offense is more egregious, they will negotiate with the offender. As long as there is an effort made, they typically give people up to 30 days to rectify the problem.

**Steve Rutherford**, with the Boise City Attorney's office, testified **in opposition to H 435**. He said misdemeanors are needed when enforcement officers have done everything they can from a civil administrative process. Only about 20 cases make it to the courthouse. Only seven of those cases received help from a public defender and none of them went to trial. It is very rare when they use the misdemeanor tool but it is very important to use for noncompliance.

**Bill Nary**, Meridian City Attorney, testified **in opposition to H 435**. He said land use laws are there to preserve our communities. The City of Meridian contracts through the City of Boise to enforce their land use requirements. They will have people who will treat the infractions as a cost of doing business. They have very few people who are charged with misdemeanors for land use violations and they are the worst offenders. Misdemeanors are the only tool they have to make them comply. He also spoke to compliance enforcement stating that liens are not efficient. They only come into play if the owner sells the property. He asked that the committee leave the discretion to the cities.

**Russell Westerberg**, representing the City of Boise, testified **in opposition to H 435** and asked that the committee not confuse this bill with the worthy effort to reduce prison population and to reduce reliance on public defenders. It will do neither.

**Rep. Luker** concluded the discussion on **H 435** by pointing out that there were no discussions about the cities ever writing infractions. Infractions are a tool that is not being used by the cities so they don't know how effective it will be. Raising the infraction level to \$300 will help.

**MOTION:**

**Rep. Batemen** made a motion to **HOLD H 435** in committee.

**Rep. Bateman** questioned whether \$300 would really deter individuals. He said since there are comparably few citations, they should let local government have the tools they need.

**SUBSTITUTE MOTION:**

**Rep. Nielsen** made a substitute motion to send **H 435** to General Orders with the amendment as follows: after three infractions are used then the fourth violation would be charged as a misdemeanor.

Several members of the committee stated they didn't hear there was a problem needing to be fixed. If the cities are satisfied with the system, let them continue.

**VOTE ON  
SUBSTITUTE  
MOTION:**

Roll call vote was requested. **Motion failed by a vote of 6 AYE, 9 NAY, and 2 Absent/Excused. Voting in favor of the motion: Reps. Luker, Nielsen, Bolz, Sims, Dayley, and Malek. Voting in opposition to the motion: Reps. Bateman, McMillan, Perry, Packer, Trujillo, McDonald, Burgoyne, Meline, and Ringo. Reps. Horman and Wills were absent/excused.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Original motion carried by voice vote. H 435** will be held in committee.

**H 463:**

**Rep. Luker** presented to the committee **H 463** which decriminalizes building code violations, making them infractions instead of misdemeanors. In this proposed legislation there is a persistent flagrant violator provision.

**MOTION:**

**Rep. Trujillo** made a motion to send **H 463** to the floor with a **DO PASS** recommendation.

**Michael Garner**, Code Enforcement Officer for the City of Boise, and **Steve Rutherford**, with the Boise City Attorney's office, testified **in opposition** to **H 463** indicating they believe this bill is similar to **H 435**.

**Bill Nary**, Meridian City Attorney, testified **in opposition** to **H 463**. He indicated the law is not abused now and this would give a lack of discretion to the city. He said he likes the idea of a step up approach but most people are not serial violators. He cannot recharge them for the same offense.

**John Foster**, representing the Idaho Association of Building Officials, testified that although the association has not had the opportunity to read the bill, he wanted to thank **Rep. Luker** for making changes to the bill as they requested.

**SUBSTITUTE  
MOTION:**

**Rep. Ringo** made the substitute motion to **HOLD H 463** in committee.

**Rep. Luker** clarified that they can charge a separate infraction for each day and each infraction would be a separate offense. The homeowner can end up with 365 infractions. The concern was for fly-by-night contractors who could be a persistent violator. They are obviously going to make more than one violation and the separate infractions can be pursued within the three year period. **Rep. Burgoyne** said it was incongruous for a homeowner to get 365 infractions but cannot get a misdemeanor.

**VOTE ON  
SUBSTITUTE  
MOTION:**

Roll call vote was requested. **Substitute motion failed by a vote of 5 AYE, 9 NAY, and 3 Absent/Excused. Voting in favor of the motion: Reps. McMillan, Packer, Burgoyne, Meline, and Ringo. Voting in opposition to the motion: Reps. Luker, Bolz, Bateman, Perry, Sims, Dayley, Malek, Trujillo, and McDonald. Rep. Nielsen, Horman, and Wills were absent/excused.**

**VOTE ON  
ORIGINAL  
MOTION:**

**Original motion carried by voice vote. Reps. Burgoyne, Meline, and Ringo** requested that they be recorded as voting **NAY. Rep. Luker** will sponsor the bill on the floor.

**Colonel Ralph Powell**, Director of the Idaho State Police, presented to the committee an update on the recent accomplishments of the Idaho State Police (ISP). The Idaho State Police Act was signed into law on February 20, 1939, by **Governor C.A. Bottolfson**. They are celebrating their 75th Anniversary. He thanked **Chairman Wills** and **Rep. McDonald** for their faithful service to the ISP. The ISP, headquartered in Meridian, is divided into six districts, with patrol and investigations operations in each district. All of their programs work to support ISP's mission of "Providing public safety across the state of Idaho through law enforcement excellence." He said during the 2012 session, the Legislature approved a dedicated funding source from license fees to go to the Alcohol Beverage Control (ABC) program to fund 12 positions. ABC is fully operational and its personnel have made progress towards visiting the premises of each of the more than 5,000 licensees in the state. ABC is also charged with ensuring compliance by licensees with Idaho's gaming statutes, certain prohibited acts, and conducting compliance operations to enforce underage drinking laws.

**Col. Powell** said Forensic Services provides direct support to Idaho's criminal justice community through crime scene evidence collection and analysis. In FY2013, nearly 8,200 new cases were received and processed. The committee has supported their efforts concerning the DNA program, and since the "All Felons" DNA statute went into effect on July 1, 2013, the Forensics program has received almost 7,400 samples. The DNA Database section has been able to keep pace with this increased load without a backlog and they have achieved a 30-day turnaround time. There have been 13 positive DNA matches since July 1st.

**Col. Powell** said Support Services has two programs: the Bureau of Criminal Identification (BCI) and the Criminal Justice Information Systems (CJIS). BCI manages the Public Safety and Security Information System, known as "ILETS", and the state's Automated Fingerprint Identification System, which identifies wanted persons through fingerprint comparisons. BCI also maintains Idaho's Central Sex Offender Registry, the Missing Persons Clearinghouse, the Uniform Crime Reporting Program and the AMBER Alert system. CJIS is another critical support provider for all Idaho law enforcement. It interfaces with several non-criminal justice computer systems, including the state's Vehicle Title and Registration System and the Drivers License System. CJIS also supports linkage to the FBI National Crime Information Center (NCIC) and the national DNA database (CODIS).

**Col. Powell** said the POST Academy is supported by dedicated and federal funds. POST receives operational direction from the POST Council which is comprised of criminal justice partners from local, state and federal agencies. ISP's Management Services provides human resource support, finance and budget services, and purchasing and warehouse activities in support of all ISP programs. Both the Racing Commission and the Brand Board are industry-supported entities located within ISP and are responsive to the concerns of their respective governing boards. The Idaho Criminal Intelligence Center is Idaho's designated Fusion Center. It provides a variety of services to local, state and federal law enforcement including Idaho's Drug Tip Hotline, case deconfliction, threat assessments, narcotics intelligence, photo line-ups, general case support and training for over 200 fusion center liaison officers.

**Col. Powell** said in FY2013, our Patrol Troopers responded to over 215,000 calls for service and investigated over 5,100 motor vehicle collisions of which 110 involved fatalities. The past two years have proven to be the lowest number of fatal crashes in Idaho since record keeping started in 1956. Troopers made nearly 5,800 felony and misdemeanor arrests, with over 1,400 of those arrests being for impaired driving. Between 2007 and 2012, the total commercial vehicle crashes in Idaho were down 26%, injury commercial vehicle crashes were down 24%, and commercial vehicle fatal crashes were down 19%.

**Col. Powell** shared how despite the low staffing levels, they have tried to make the best use of the resources they have. A study conducted for their Patrol program and updated in 2011, details the number of miles of state and federal highways that must be patrolled in Idaho. The study concludes that ISP would need more than 90 additional troopers to provide adequate statewide patrol coverage. ISP is able to capitalize on collaborations with city, county, and federal law enforcement agencies to enhance the service they provide. ISP supports every law enforcement agency in the state in working complex, large-scale drug trafficking and high-profile criminal cases. To further ISP's interdiction efforts, ISP has expanded its K9 program from one "passive alert drug detection" K9 in Jerome, by adding three more dogs. The K9s and their handlers are currently training to become certified. Col. Powell thanked the committee for their continued support of the ISP and their dedicated employees as they strive to provide quality law enforcement services to Idaho's citizens and visitors.

**Rep. Bolz** thanked **Julia Horman** for her hard work as the committee's Page for the last six weeks and wished her well in her future endeavors.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:23 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Monday, February 17, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 453</u></a>	Penalties for Crimes against Elderly	Rep. Kauffman
<a href="#"><u>H 446</u></a>	Divorce Actions, Parenting Coordinator	Hon. Michael Dennard
<a href="#"><u>H 447</u></a>	Protection of Persons, Guardianship and Conservatorship	Hon. Michael Dennard
<a href="#"><u>H 456</u></a>	Prison Boarding Fees	Michael Kane, Idaho Sheriffs Association
<a href="#"><u>H 462</u></a>	Ski Areas Responsibilities	Skip Smyser, Idaho Ski Areas Association
<a href="#"><u>H 459</u></a>	Molestation	Rep. Malek

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

Francoise Cleveland  
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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Monday, February 17, 2014  
**TIME:** 1:30 P.M.  
**PLACE:** Room EW42  
**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Meline

**GUESTS:** Shelli Sonnenberg, Boise Police Dept.; Christa Ledbetter, Adult Protection; Kari Seibel, Nampa Police Department; Tom Geroes, Nampa Police; Deputy Matt Hawkins, Twin Falls County; Skip Smyser, ISAA; Mathew Walters, ISAA; Alan Moore, Bogus Basin; Ted McIntyre, Twin Falls County Sheriff Office; Jason Kreisenbeck, Lobby Idaho; Barbara Jorden, ITLA; Holly Koole, IPAA; Mike Kane, ISA; Caitlin Rusche, IAC; Judge Dennard, Courts; Lee Flinn, AARP; Russell Westerberg

**Chairman Wills** called the meeting to order at 1:31 PM.

**Chairman Wills** welcomed to the committee new House Page **Duncan Brain**. He is a honor student at Wallace High School where he plays varsity football, basketball, and golf.

**H 453:** **Rep. Kauffman** presented to the committee **H 453** which enables prosecutors and judges to use enhanced penalties to persons convicted of felonies against older persons. Older persons are defined as 65 years of age or older. Rep. Kauffman said as the population grows in the United States, the issue of elder mistreatment is garnering the attention of law enforcement, medical, and research communities. More and more people are living longer and this trend is expected to increase. The 2010 Census shows there are more than 180,000 Idahoans, or 12% of Idaho's population, over the age of 65. By 2025, it is estimated the percentage will be up to 17%. According to the National Institute of Justice, 1 in 10 older Americans, or about five million individuals a year, is expected to experience abuse. This abuse can take many forms like financial exploitation, fraud, physical abuse, neglect by a caregiver, or emotional abuse. He said this legislation will send a strong message that Idaho will not tolerate this bad behavior.

In response to a question, **Holly Koole** of the Idaho Prosecutors Association, assured the committee that these enhanced penalties would not be retroactive. Additional charges would not be allowed under this statute for a crime already sentenced. In response to a question, **Rep. Kauffman** indicated this enhancement is modeled after the firearms statute which uses a separate charge. The enhancement is not automatic.



**Shelli Sonnenberg**, a financial crimes detective for the Boise Police Department, testified in support of H 453. She said she has worked on a number of cases where crimes are committed due to the age of their victim. Many aged victims are vulnerable because of the mentality of that generation. An example would be how deals were agreed upon by a handshake. Currently, she cannot explain that a crime has vulnerability issues based upon age. An actual vulnerable adult charge cannot be pursued in these types of cases. In response to a question, Ms. Sonnenberg explained the language in the Code for the exploitation of vulnerable adults does cover a lot of vulnerabilities but these are very specific and merely being aged does not qualify.

**Crista Ledbetter**, of Adult Protection, explained she was testifying neither for nor against the bill but wanted to let the committee know that in 2013, 1,722 cases of abuse went through her office. That is a marked increase of 53% from the previous year. Her office can give cognitive tests for adults to determine vulnerability but they are not infallible. She gave an example of people with dementia who can pass the test in the daytime but would fail at night when symptoms are worse. Abuse or scams of the elderly is a daily occurrence.

**Matt Hawkins**, Deputy for the Twin Falls County Sheriffs Office, testified in support of H 453. He presented an example of owners of an assisted living center mistreating, with a wide variety of abuse, the adults in their facility. He said this legislation would be a great tool for him to use to pursue these types of crimes. In response to questions, Deputy Hawkins explained they prefer to charge individuals with everything they can so having an enhanced penalty of 10 years would help. He said it helps the prosecutor plead a case if there is more to charge. He said aggravated battery against a younger person is less of a crime than against one who is 65 or older who cannot save themselves or recover as quickly.

**Michael Kane**, of the Idaho Sheriffs Association, testified in support of H 453. He said research indicates there are mainly two types of financial crimes performed against the elderly, one perpetrated by caregivers and one by strangers. Stranger fraud can include investments, charity contributions, home and automobile repair, loans and mortgage, health and funeral, life insurance, health remedies, and travel. Caregiver fraud can include joint bank accounts, deed or title transfers, power of attorney, living trusts, and wills. He said the prevailing stereotype of elderly fraud victims is they are poorly informed, socially isolated, and potentially suffering from mental deterioration. They cling to old fashion ideas of politeness and manner that interfere with their ability to detect fraud. Recent research has refuted these stereotypes characterizing the majority of the victims as more educated, informed, and socially active than previously supposed. Seniors with active social lives are more susceptible because they have more exposure.

**Mr. Kane** said a vulnerable adult is defined in Idaho law as: an adult who is 18 years of age or older and who is unable to protect himself from abuse, neglect, or exploitation, due to a physical or mental impairment which affects the persons judgement or behavior to the extent he lacks efficient understanding or capacity to make or communicate or implement decisions. This is a very high burden of proof and not all victims qualify. This charge would be separate and the enhancement can be used in appropriate cases or not at all. In response to questions, Mr. Kane indicated the only proof required for the enhanced penalty is age. Proof of intent is not required. **Rep. Luker** noted there is a study which indicates the longer the sentence, the higher the rate of recidivism.

**Ted McIntyre**, investigator for the Twin Falls Sheriff's office, testified in support of **H 453**. Mr. McIntyre cited a case in which an elderly woman's medication was withheld from her and resulted in her becoming severely ill. Trying to prove this in court would have been extremely difficult. He said having an enhanced penalty would help.

**Rep. Kauffman** said they are not working to put as many people in jail as possible but some people deserve to be in jail. The state will need to pick up the bill for these elderly people when they are out of money. This is another way to keep bad people away from the elderly. He said he did not think the study **Rep. Luker** mentioned would say the inverse, that shorter sentences deter crime.

**MOTION:** **Rep. Burgoyne** made a motion to **HOLD H 453** in committee.

**Rep. Burgoyne** said this is not needed for everyone over the age of 65. He explained that some lives should not be worth more than others because of a birthday.

**SUBSTITUTE MOTION:** **Rep. Nielsen** made a motion to send **H 453** to the floor with a **DO PASS** recommendation.

**VOTE ON SUBSTITUTE MOTION:** Roll call vote was requested. **Substitute motion failed by a vote of 7 AYE, 8 NAY, 2 Absent/Excused. Voting in favor of the motion: Reps. Nielsen, Bolz, Bateman, Horman, Malek, McDonald, and Wills. Voting in opposition to the motion: Reps. Luker, McMillan, Perry, Sims, Dayley, Trujillo, Burgoyne, and Ringo. Reps. Packer and Meline were absent/excused.**

**VOTE ON ORIGINAL MOTION:** Roll call was requested on the original motion. **Original motion carried by a vote of 8 AYE, 7 NAY, 2 Absent/Excused. Voting in favor of the motion: Reps. Luker, McMillan, Perry, Sims, Dayley, Trujillo, Burgoyne, and Ringo. Voting in opposition to the motion: Reps. Nielsen, Bolz, Bateman, Horman, Malek, McDonald, and Wills. Reps. Packer and Meline was absent/excused. H 453 will be held in committee.**

**H 446:** **Hon. Michael Dennard**, Senior Judge and Senior Manager of Court Services for Children and Families at the Administrative Office of the Courts, presented **H 446** to the committee. This bill would amend Idaho Code by adding a subsection which would give the court the discretion to award attorney's fees and costs to the prevailing party on a motion to set aside or modify the decision of a parenting coordinator. The goal of appointing a parenting coordinator in a case is to avoid or substantially reduce, time-consuming and expensive litigation between high conflict parties and their children.

**Rep. Luker** noted, because the intent is for a person to reflect seriously before they put someone through the process, he is afraid it may turn away people with legitimate concerns.

**MOTION:** **Rep. Burgoyne** made a motion to send **H 446** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. McMillan, Luker, and Ringo** requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

**H 447:** **Hon. Michael Dennard**, Idaho Supreme Court Senior Judge, presented to the committee **H 447** which eliminates the current statutory language for reporting requirements for guardians and conservators. He said the broad purpose of these amendments would be to transfer the specific requirements for these reports from statute to court rule. The bill would also ensure any costs recovered for visitors' reports in guardianships which are prepared by court employees, be deposited into the Guardianship and Conservatorship Fund.

**MOTION:** **Rep. Burgoyne** made a motion to send **H 447** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Burgoyne** will sponsor the bill on the floor.

**H 462:** **Skip Smyser**, of Lobby Idaho and representing the Idaho Ski Areas Association, presented **H 462** which updates and clarifies language within the Idaho Ski Liability Act. This is a modernization of the Idaho Ski Laws which were passed in 1979. He said what one sees now and what one would have seen in 1979 on a ski hill is very different. This bill would modernize the Code so it pertains to what is happening on the hill today. There are no national standards regarding these new activities. When standards are developed, he indicated they are open to having those as part of the law.

**Matthew Walters**, of the Idaho Ski Areas Association, testified **in support of H 462**. Mr. Walters detailed the definitions itemized in the legislation. He also explained the change in the expressed assumption of risk. This legislation defines which risks are inherent and are therefore assumed when you participate in the sport, like free style terrain parks, snow immersions and inbound avalanches.

**Rep. Luker** expressed concern that manufactured and constructed obstacles would be included in the immunity provided by this bill. He asked who would be liable if the structures fail. **Mr. Walters** responded the ski areas would be immune from being sued by the skier but the manufacturer could be sued. He said skiing will always have an inherent risk which cannot be removed by a ski operator. Other members of the committee expressed concern this legislation would expand the freedom of liability for the ski area operator. **Rep. Nielsen** likened the free style terrain to an amusement park on the hill and suggested to find liability language from dealings with amusement park operators.

**Alan Moore**, General Manager for Bogus Basin, testified **in support of H 462**. He said ski areas are slippery. Individuals have to accept the inherent risks. There is nothing really mechanical about the rails; they are welded metal which are continuously checked by the staff. He said if ski areas do not offer terrain parks then the skiers will build their own features without adult supervision or emergency personal. It is much safer to have these within the ski areas.

Several members of the committee expressed concern this legislation would completely absolve the ski areas of any liability. **Rep. Malek** said the ski areas would still be liable for negligence.

**Barbara Jorden**, of the Idaho Trials Layers Association, testified in regards to **H 462**. She asked the committee to hold off on any legislation until a set of standards is written for these types of terrain parks. Currently, there are no standards but the industry is working towards that goal. The standards should be a trade off for the immunity. Immunity discourages the search for safer practices. She is also concerned because the legislation would give immunity to all ski area operators, not just reputable ones.

**Skip Smyser** explained this legislation only covers ski hill operators. It would not cover areas like the one in Eagle, Idaho. When standards are developed, it is reasonable to come back and bring those into the law. This legislation is only a needed modernization of the language.

**MOTION:** **Rep. McMillan** made a motion to send **H 462** to the floor with a **DO PASS** recommendation.

**Rep. Bateman** said he supports this legislation because without immunity the same opportunities would not be available. There is an inherent risk in this type of behavior. **Rep. Sims** said she supports the bill because the insurance cost to the ski hill operators would be too high.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Reps. Luker, Burgoyne, and Ringo** requested they be recorded as voting **NAY**. **Rep. Malek** will sponsor the bill on the floor.

**H 459:**

**Rep. Malek** presented to the committee **H 459** which closes a gap in current statute to protect victims of molestation who are asleep or unconscious at the time.

**MOTION:**

**Rep. Packer** made a motion to send **H 459** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Malek** will sponsor the bill on the floor.

**H 456:**

**Michael Kane**, representing the Idaho Sheriffs Association, presented to the committee **H 456** which increases the daily rate for state sentenced prisoners housed in county jails from \$40 to \$50. The counties strongly support the bill. They are happy to house the inmates but would like to get reimbursed closer to what the actual cost is for housing a prisoner. The last raise to \$40 was in the year 2000. Many long-term prisoners are being held in the county jails so the state does not have to build another prison. The cost per day, per inmate differs greatly across the state, depending on how much the facility costs to operate. If the cost is above the \$40 rate, the county has to make up the difference. In response to questions, Mr. Kane said facilities have different operating costs depending on how large or small the facility is, how old, whether they contract the medical personnel, and other variations. He said even though the average cost is higher than \$50, they are trying to be reasonable and not overreaching.

**MOTION:**

**Rep. Truillio** made a motion to send **H 456** to the floor with a **DO PASS** recommendation.

**Rep. Bolz** explained that **Rep. Bell** with JFAC does not see a problem with the raise but is concerned about the \$2.19 million increase. He said he is already requesting a 9% increase in the Department of Correction budget. The \$2.19 million would be added to that increase. **Rep. Ringo** said the cost is what it is; it is just a matter of who pays for it. Right now, the state is passing the cost down to the property taxpayers.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Bolz** requested he be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 4:38 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 P.M.**  
**Room EW42**  
**Wednesday, February 19, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">HCR 40</a>	Continuation of Interim Public Defender Study Committee	Rep. Bolz
<a href="#">H 454</a>	Establishing State Public Defender Commission	Rep. Bolz
<a href="#">H 457</a>	Evidence of Safety Restraint	Michael Kane, Idaho Sheriffs Assn.
<a href="#">H 512</a>	Court Determination of Indigency	Rep. Perry
<a href="#">H 510</a>	Government Liability	Rep. Morse
<a href="#">H 461</a>	24/7 Sobriety/Drug Monitoring Program	Skip Smyser, Lobby Idaho, LLC
<a href="#">H 449</a>	Wage Garnishment Service	John Watts, Veritas Advisors, LLP

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, February 19, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Chairman Wills

**GUESTS:** Michael Henderson, Supreme Court; Barry Wood, Supreme Court; Kurt Holzer, ITLA; Barbara Jorden, ITLA; Mike Kane, PCI; Paul Panther, Attorney General; Paul Jackson, Farmers Insurance; John Watts, Veritas Advisors; Bryan Zollinger, Smith, Driscoll and Assoc.; Sean Beck, Johnson Mark, LLC; Stacy Langton, Johnson Mark, LLC; Kimball Jeppsen, Medical Recovery Services; Audra Powell, Smith, Driscoll and Assoc.; Mike Kane, ISA; Monica Hopkins, ACLU; Skip Smyser, Intoximeters, Inc.; Ben Webb, JP. Development Inc.; Angela Richards, Allstate; Phil Barber, American Insurance Association; Lyn Darrington, State Farm; Woody Richards, American Family; Jessie Luther, Browning Kaleczyc Berry and Hoven

**Vice Chairman Luker** called the meeting to order at 1:31 PM.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of the February 3, 2014, meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of the February 11, 2014, meeting. **Motion carried by voice vote.**

**Vice Chairman Luker** reminded the committee of the Department of Correction tour of the prison next Tuesday, March 25th, at 1:30 PM.

**HCR 40:** **Rep. Bolz** presented to the committee **HCR 40** which authorizes the continuation of an interim study committee appointed by Legislative Council. It would complete the work on the Idaho Public Defense System started several years ago with a subcommittee within the Criminal Justice Commission. The interim committee will finish their work on several matters like the role municipalities will play in the Public Defense System and permanent funding sources.

**MOTION:** **Rep. Trujillo** made a motion to send **HCR 40** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bolz** will sponsor the bill on the floor.

**H 454:** **Rep. Bolz** presented to the committee **H 454**. This legislation would establish a State Public Defender Commission. He said the Controller's office indicated the two separate accounts created by the legislation would not be feasible therefore a new bill will be drafted.

**Rep. Burgoyne** noted the importance of having representation on the commission from the minority party.

**UNANIMOUS  
CONSENT  
REQUEST:** **Rep. Bolz** made an unanimous consent request to **HOLD H 454** in committee. There being no objection, the request was granted.

**H 457:** **Michael Kane**, of the Property Casualty Insurers Association of America, presented **H 457**. This legislation would modify the law preventing a jury from learning a person who is a plaintiff in a personal injury action failed to wear a seat belt in an automobile accident. The strikeout provision says, no matter the circumstances, the fact someone did not wear a seat belt cannot be presented in court. Over the years, in limited circumstances, it has become apparent a jury should be able to hear this evidence. For example, when a defendant's injuries were worse due to the failure to wear the safety restraint. This legislation would allow this to happen. The defense would have to present the information with clear and convincing evidence to the judge first then, if approved, it would be presented to the jury. This evidence would only pertain to a third party suit, only when one person is suing another. This will not apply to children.

**Angela Richards**, representing Allstate and Farm Bureau Insurance Companies, testified in support of **H 457**. She said it will encourage people to use seat belts more often thereby reducing injuries and death. This legislation is about personal responsibility and fairness in presenting evidence in a civil suit.

**Phil Barber**, of the American Insurance Association, **Woody Richards**, of American Family Insurance, and **Paul Jackson**, of Farmers Insurance, testified in support of **H 457**.

**MOTION:** **Rep. Packer** made a motion to send **H 457** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**H 432:** **Rep. Perry** made an unanimous consent request to **HOLD H 432** in committee. There being no objection, the request was granted.

**H 512:** **Rep. Perry** presented to the committee **H 512**, which is a replacement of **H 432**. She said the current statute regarding the receipt of a public defender reads, "the court shall presume the following persons are indigent persons unless such a determination is contrary to the interest of justice." If an individual meets these criteria, they are automatically considered indigent and can receive a public defender. Determination for indigency can include persons who receive, or whose dependents receive, public assistance in the form of food, health coverage, or cash. Therefore, it is possible that receipt of a subsidy from the Idaho Health Exchange could be considered public assistance in the form of health coverage. She said the intent of this legislation is to clarify that participation in the Exchange, which is an avenue for a health insurance subsidy, shall not alone cause an automatic assumption of indigency. Changes were made from the previous bill, **H 432**, based on valid concerns of the ACLU on the overlap of verbiage of who can qualify based on federal poverty guidelines.

**MOTION:** **Rep. Trujillo** made a motion to send **H 512** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**H 510:** **Rep. Morse** presented to the committee **H 510**. The original language provides means for attachment, garnishment, and execution against monies owed by the state. The language excludes elected officials of the state of Idaho. The purpose of the bill is to strike that exclusion and treat all Idaho citizens the same.

In response to a question, **Rep. Morse** said the original law is a blanket protection for any type of attachment and garnishment of wages, including such items as past income taxes, child support, or a commercial debt.

**MOTION:** **Rep. Packer** made a motion to send **H 510** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Morse** will sponsor the bill on the floor.

**H 461:**

**Skip Smyser**, of Lobby Idaho, LLC, presented **H 461** to the committee on behalf of his client, Intoximeters, Inc. He explained a study was done on the 24/7 sobriety project in South Dakota. The study found alcohol consumption can impose an enormous health and safety cost on individuals in society. Problem drinkers account for a disproportionate share of these costs. He said, although millions of problem drinkers pass through the criminal justice system each year, reducing their alcohol consumption has proven difficult. Those convicted of an alcohol involved offense are sometimes ordered not to drink or frequent bars but their abstinence is difficult to enforce. The 24/7 program empowers the judges and those involved in the criminal justice system by having a better way to deal with these individuals. He said the 24/7 program, as a condition of pre-sentence release or a post-sentencing remedy, would allow the offender the opportunity to be involved in frequent sobriety testing. If they fail the test, it has an immediacy from law enforcement putting the offender back into the system without delay. This is a voluntary program geared toward DUIs but can also be used for other offenses like domestic violence. It has enough merit to be used throughout the state of Idaho.

In response to a question, **Mr. Smyser** said in South Dakota there has been a documented 12% reduction in repeat DUIs and a 9% reduction in domestic violence.

**MOTION:**

**Rep. McDonald** made a motion to send **H 461** to the floor with a **DO PASS** recommendation.

**Paul Panther**, Chief of the Criminal Law Division of the Office of Attorney General, detailed the specifics of **H 461**. He said this legislation is in line with the justice reinvestment efforts though immediate sanctions for offenses and keeping people out of jail and prison. This is a completely optional program. It allows somebody who is part of a court order to require a person to abstain from alcohol. He said the Attorney General would need to adopt the rules of the program. This includes providing for the nature and manner for the testing, establishing reasonable fees, review contracts, and overseeing data collection. This would protect the counties and create a uniformity across the state.

In response to questions, **Mr. Panther** said individuals would be given this option as a condition of their release. They would agree to the release provisions or stay in jail. He also indicated he did not anticipate a cost increase for the Attorney General's office. In response to a question regarding how long alcohol stays in the system, **Mr. Symser** admitted someone could theoretically work the system. However, most who are problem drinkers would drink alcohol consistently and be caught. Members of the committee expressed concern whether the sanctions would truly be immediate.

**Hon. Barry Wood**, Senior District Judge with the Idaho Supreme Court, testified in **support** of the concept of the bill. Drug testing in general is critically important to the judges in the judiciary system. It allows accountability to everyone involved.

**VOTE ON MOTION:**

**Motion carried by voice vote. Rep. Malek** will sponsor the bill on the floor.

**H 449:**

**John Watts**, representing the Idaho Collector's Association through Veritas Advisors, LLP, presented to the committee **H 449**, which details the process of collecting wage garnishments in Idaho. He said the purpose of this legislation is to provide a more expedited and economical mean for private sector business to collect money rightfully due them, through the extension of their good faith and credit, from someone who has chosen not to pay their bill. The role of collection agencies is to help businesses collect money rightfully owed to them by a debtor. The courts have adjudicated this money due.



**Mr. Watts** said there are several public policy changes within this legislation. The first public policy change allows a serving attorney to participate in wage garnishments that have been ordered by the court. The court still remains in the middle. Second, there is also an opportunity for the debtor to file a claim of exemption with the court. Thirdly, if the serving attorney does not turn the money over to the creditor, the provided language allows the creditor a 'cause of action' to collect up to three times the amount plus be subject to any criminal penalties incurred. Most importantly, the money the debtor has paid in good faith will be credited. The fee set for the service is \$40 plus an additional continuing garnishment fee. There will be no commission or return service fee.

**Audra Powell**, of Smith Driscoll and Associates, testified **in support** of **H 449**. She said this legislation would simplify the process for the debtor. It will not stop the sheriffs' offices from doing garnishments; it will just give another option for the creditor.

**MOTION:**

**Rep. Malek** made a motion to send **H 449** to the floor with a **DO PASS** recommendation.

In response to a question, **Ms. Powell** said, depending on the county and the case, there could be a substantial savings for the debtor.

**Michael Kane**, of the Idaho Sheriffs Association, testified **in opposition** the **H 449**. He said there is a centralized administrative process of garnishment. Garnishments are taken in the order they are received. The Sheriff keeps track and works through them in this order. He asked, without the Sheriff, who is going to keep track of who is first in line? The employers will have to guess which garnishment to do first. Large employers, like JR Simpot, may have numerous garnishments. When this happens, it is not unusual for the employer to write one check for all the employees under wage garnishment. If attorneys are going to get them, then the employers will have to issue separate checks for each debtor. If they send one check through the Sheriff, nobody will get their money in a timely manner since the Sheriff will not be able to cash the combined check. In addition, he indicated that attorneys make mistakes, which the Sheriffs catch. He said he does not see a reason to take the Sheriff out of the mix. The system works as it is.

**Ben Web**, Vice President and Partner Manager of JP Development, and Past President of the Idaho Collectors Association, testified **in support** of **H 449**. He said not all garnishments are served in a physical manner. The majority of garnishments are served on the employers via fax or by mail. He said whereas there may be mistakes in the documents, like a number or date, typically this is not indicative of the process. Nowhere in Idaho Code does it say the Sheriff is charged with the duty to look over the documents of the court. There are 44 different ways of doing wage garnishments from the counties. The employer still would need to keep track of the order, if the garnishments come from different Sheriffs.

**Michael Henderson**, legal counsel with the Idaho Supreme Court, testified in regard to **H 449**. He said the courts questioned why this legislation was needed. The Sheriffs have been doing a good job and they are a neutral, competent entity in this process. This new process can open the door for abuses. This can lead to disputes victimizing debtors which will ultimately effect creditors and lead back to the courts. He said he does not want to create situations where more disputes are generated than necessary. He asked who was going to verify the paperwork to ensure that the exemptions available will be honored and that the collector is taking no more than the permitted portion of wages? The most important problem to this legislation is the prioritization of the garnishments. The manner of how these garnishments are served will severely damage the process in a significant way. Whereas before multiple garnishments from different counties happened occasionally, the possibility of overlapping garnishments from different serving

attorneys will happen more frequently. How will the employer be able to determine which garnishments to process first? He said the employers will be liable if it is done incorrectly. The current system is working well and there is no need to change it.

**Bryan Zollinger**, an attorney with Smith, Driscoll and Associates in Idaho Falls, testified **in support of H 449**. He said this legislation would decrease the amount of fees paid by the debtor so the debt would be paid off quicker. This is better for both the debtor and the creditor. He said both the attorneys and the Sheriffs can make mistakes but attorneys are actually trained in the law. The employers are competent and know what is going on.

**Sean Beck**, managing attorney of the Idaho office of Johnson Mark, a creditor law firm, testified **in support of H 449**. He said based on similar processes in other states, the cost of garnishments will be less by using the private sector. In response to questions, he said using the private sector enables the debtor to ask questions about the garnishment to the attorney. Right now, attorneys have to direct questions through the Sheriff's office.

**Mr. Watts** concluded the testimony on the legislation. He reiterated this legislation is not a mandate, some people just prefer to use the private sector. It impacts wage garnishments only.

**Rep. Luker** spoke **in opposition to H 449** because it creates too much of a burden on small business.

**Rep. Burgoyne** spoke **in support of H 449** saying that once businesses have dealt with wage garnishments, it usually isn't a problem for them. It is part of the overhead of being in business.

**Rep. Bateman** spoke **in support of H 449** because he does not think government should have a monopoly on this type of business.

**ROLL CALL  
VOTE:**

Roll call vote was requested. **Motion carried by a vote of 10 AYE, 4 NAY, 3 Absent Excused. Voting in favor of the motion: Reps. Nielsen, Bateman, McMillan, Dayley, Malek, Packer, Trujillo, McDonald, Burgoyne, and Ringo. Voting in opposition to the motion: Reps. Luker, Sims, Horman, and Meline. Reps. Bolz, Perry, and Wills were absent/excused. Reps. Trujillo and Burgoyne will sponsor the bill on the floor.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 4:51 PM.

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Representative Luker  
Vice Chairman

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Thursday, February 27, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 509</u></a>	Court Technology Fund	Patti Tobias, Administrative Director of the Courts
<a href="#"><u>HR 5</u></a>	Amendment to House Rule 74	Rep. Wills
<a href="#"><u>S 1239</u></a>	Public Administrator/Estate Assets	Seth Grigg, Idaho Association of Counties
<a href="#"><u>H 455</u></a>	Victim Notification Fees	Michael Kane, Idaho Sheriffs Assn.
<a href="#"><u>H 518</u></a>	Amendment to the Scrap Metal Act	Rep. Malek
<a href="#"><u>H 465</u></a>	Juvenile Proceedings, Shelter Care	Rep. Perry
<a href="#"><u>H 464</u></a>	Health and Welfare Consultation for Removal of Child	Rep. Perry

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, February 27, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Bolz, Horman

**GUESTS:** Kendra Neely, Recyclers; Kip Higby, Boise Police; Jan Bennetts, Ada County Prosecuting Attorneys Office; Holly Koole, IPAA; Mike Kane, Idaho Sheriffs Association; Molly Vaughn, Parole Commission; Patti Tobias, Courts; Hon. Linda Copple Trout; Sr. Judge Barry Wood; Bob Wetherell, State Bar; Sara Thomas, ICJC; Elizabeth Criner, Simplot; Vicky McIntyre, IACT; Galen Carlson Fields, Ada County Prosecutors Office; Tammara Slater, ISA; Aleshea Boals, Canyon County Sheriff; Dennis Tanikuni, Idaho Farm Bureau; Rich Hahn, Idaho Power; Tracie Lloyd, Canyon County; Donna Petterson; IACT; Seth Grigg, IAC; Neil Colwell, Avista

**Chairman Wills** called the meeting to order at 1:31 PM.

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of February 13, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Ringo** made a motion to approve the minutes of February 17, 2014. **Motion carried by voice vote.**

**H 509:** **Patti Tobias**, Administrative Director of the Courts, presented to the committee **H 509** which will provide the necessary support for the implementation of a new technology solution for the Idaho courts. Ms. Tobias said ISTARS, the current technology program, has reached its end-of-life. Odyssey, the selected program to replace ISTARS, is a fully-integrated "enterprise" system developed by Tyler Technologies. It is the most mature, highly developed court case management system on the market today. She said it has the most functionality, at the lowest overall cost. With the new program, they plan to replace and modernize the case management system for all court cases in the trial and appellate courts, move to electronic filing and storage of all court documents, and expand video conferencing across the state. All will be supported by a statewide network infrastructure.

**Ms. Tobias** said this bill, along with multiple, one-time, bridge funding from the Joint Finance Appropriations Committee, will fund the five year business plan and beyond. **H 509** provides a set of graduated civil filing fees to provide the increase in ongoing funds for court technology including: a \$125 increase for civil cases filed in district court; a \$70 increase for appearances and civil cases filed in the magistrate division; and a \$20 increase for miscellaneous actions. With the new technology in place, at least one hour of an attorney's hourly rate in each civil case filed in district court will be saved with the efficiencies achieved and cost savings of E-filing, E-records, and video conferencing. She said, these time and cost savings will more than offset the one-time, up-front filing fee for Idahoans. Idaho Code provides a waiver of fees in the event of an inability to pay.

**Ms. Tobias** said, parties and attorneys will be able to electronically file new cases and court documents 24 hours per day, 7 days a week, in any court in this state. In the future, anyone with internet access will be able to quickly find court documents and track court cases. Each day, the financial management system will assist courts in collecting over \$200,000 in fines, fees, and restitution, totaling more than 55 million dollars annually, distributed to over 200 state and county entities, pursuant to statutory direction. A Judicial Workbench will allow judges to readily access secure case information and conduct legal research from the bench. The entire jury process will be automated, from the initial summons to the selection of a jury, in one statewide jury system. Odyssey will also permit the close monitoring and case management of almost 4,000 problem-solving court offenders and 17,000 misdemeanor probationers annually.

**Ms. Tobias** said, their vision is to continue to serve as the hub for data exchange between state and county agencies. This investment saves taxpayers money, provides greater access to court records and services, and measures and improves performance.

**Justice Linda Copple Trout**, chair of the design and implementation team for the software program, said Odyssey is an off-the-shelf product. This means it is fully designed and ready to be implemented but work is still required to make sure the court's practices and procedures comport with Odyssey. She said if Odyssey does not have a process for doing what is needed, Tyler can have the software developed. There is a fixed amount built within budget for this software development. Over the last few months, they have identified and written out every practice and process available in Idaho for every type of court case, from beginning a civil lawsuit with the filing of a complaint, to entry of a judgment and appeal, procedures involving issuing arrest and search warrants, collecting and distributing fines and fees, handling guardianships and conservatorships, issuing Domestic Violence Protection orders, and all of the processes for handling infractions, misdemeanors and felonies.

**Senior Judge Barry Wood**, on behalf of the Idaho Supreme Court, detailed the specific changes in the law for the committee.

**MOTION:**

**Rep. Burgoyne** made a motion to send **H 509** to the floor with a **DO PASS** recommendation.

**Bob Wetherell**, of the State Bar, testified **in support of H 509**. He said that this new technology will save money for all of the people involved.

**Sara Thomas**, State Public Defender and Chair of the Criminal Justice Commission, testified **in support of H 509**. She said the case management system is not just for courts; it is also for prosecutors and public defenders who can purchase software plug ins for the program. Because information can be accessed throughout the counties, individual counties will have needed information, such as when someone is wanted on a warrant in another county. In this new system, there will be no need to have paper documents. She said this system will help monitor the public defense system by allowing more current information to be readily accessible, instead of waiting for the annual reports.

**Elizabeth Criner**, representing the JR Simplot Company, testified **in support of H 509**. She said they are in support of efforts to ensure efficient and effective government in our state.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Wills** will sponsor the bill on the floor.

**HR 5:**

**Chairman Wills** explained that **HR 5** has been rewritten.

**UNANIMOUS  
CONSENT  
REQUEST:**

**Chairman Wills** made a unanimous consent request to **HOLD HR 5** in committee. There being no objection, the request was granted.

**S 1239:**

**Seth Grigg**, of the Idaho Association of Counties, presented to the committee **S 1239**. This legislation amends Idaho Code to allow a public administrator the ability to deduct the debts of a decedent as well as projected costs to administer the decedent's estate from the inventory taken from the estate. It will also increase the minimum estate amount required for publishing and notifying creditors from \$1,000 to \$5,000.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**MOTION:**

**Rep. Trujillo** made a motion to send **S 1239** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Trujillo** will sponsor the bill on the floor.

**H 455:**

**Michael Kane**, of the Idaho Sheriffs Association, presented to the committee **H 455** which will increase fees for the victim and witness notification system, known as VINE, from \$10 to \$15. He said according to the Constitution, victims have the right to prior notification of trial court, appellate and parole proceedings, and to information about the sentence, incarceration and release of a defendant. This electronic system instantaneously notifies victims of these actions. This program is used by 47 states and the federal government. If the fees are not raised, part of the program will be lost. He said the courts do have a way to waive this fee for individuals.

**Tammara Slater**, of the Idaho Sheriffs Association, testified **in support** of **H 455**. She explained there are two components of the system: victim and court notifications. Apart from victims, many different entities from the courts, from defendants to prosecutors, use this program. The court notifications component will be tied into the new court technology program, Odyssey.

**MOTION:**

**Rep. Bateman** made a motion to send **H 455** to the floor with a **DO PASS** recommendation.

In response to questions, **Mr. Kane** said they were behind in fees because of fees not being paid and fees not being set high enough. They used 2009 numbers, a year that had a spike in convictions so the number of individuals paying into the system went down in the years after that. He also said fees were the only way available to pay for this service.

**Rep. Burgoyne** spoke **in support** of the legislation. He said this is a justifiable fee. It is an unfortunate fee but there is a constitutional obligation to do this. **Rep. McDonald** spoke **in support** of the legislation. He said there is a need to protect the people and victims who are afraid they will be a victimized again.

**VOTE ON  
MOTION:**

**Motion carried by voice vote.** **Reps. Nielsen, Sims, and Dayley** requested they be recorded as voting **NAY**. **Rep. Bateman** will sponsor the bill on the floor.

**Vice Chairman Luker** turned the gavel back to **Chairman Wills**.

**H 518:**

**Rep. Malek** presented to the committee **H 518** which amends the Scrap Metal Act. The amendments would reduce the circumstances by which a felony charge may be imposed, provides details on circumstances by which a scrap metal dealer must make photographic images of its customers, and corrects several other technical details.

**Neil Colwell**, lobbyist for Avista Corporation, testified **in support** of **H 518**. The purpose of this legislation is to reduce metal theft. It is also their intention to make the bill passed last year more workable for the scrap metal dealers. They wanted to reduce the impact on smaller scrap metal dealers so the burdens imposed on them would not be too onerous.

**Rep. Sims** expressed concern about the definition of commercial metal property. She said the definition is too broad to include just scrap metal dealers. It will include the kinds of metal dealt with in jewelry stores, antique shops and other businesses. **Mr. Colwell** responded that this legislation is intended for those businesses reprocessing the metal.

**MOTION:**

**Rep. Nielsen** made a motion to send **H 518** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** requested she be recorded as voting **NAY**. **Rep. Malek** will sponsor the bill on the floor.

**H 465:**

**Rep. Perry** reported there are still concerns which have not been resolved with **H 465**.

**UNANIMOUS  
CONSENT  
REQUEST:**

**Rep. Perry** made a unanimous consent request to **HOLD H 465** in committee. There being no objection, the request was granted.

**H 464:**

**Rep. Perry** presented to the committee **H 464** which requires a peace officer to consult with the Idaho Department of Health and Welfare's Child Protection Division before declaring a child in imminent danger and taking them into state care. Currently, Idaho statute states a child may be taken into shelter care by a peace officer without a court order to do so. The statute states this can occur "where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child or where the child is abandoned." She said the statute is vague as to what constitutes serious physical or mental injury; only the definition of mental injury is found within the Child Protective Act. The definition of physical injury is absent in the statute.

**Rep. Perry** said the bill directs a law enforcement officer to consult with the Department of Health and Welfare prior to declaring imminent danger. The purpose of the consult is to give the officers a clearer picture of whether it is in the child's best interest to declare imminent danger immediately or whether it may be more appropriate to have the department conduct an investigation first. The intent is to take children into care only when it is absolutely necessary and to help the officers to make a better, more informed decision. This is to reduce unnecessary trauma to the child.

In response to a question, **Rep. Perry** said the Department of Health and Welfare has a centralized intake system that works 24/7/365. This system is set up so law enforcement is prioritized and usually will be sent to a supervisor.

**MOTION:**

**Rep. McDonald** made a motion to send **H 464** to the floor with a **DO PASS** recommendation.

**Michael Kane**, of the Idaho Sheriffs Association, testified **in support** of **H 464**.

**Kip Higby**, Special Victims Unit of the Boise Police, testified **in opposition** to **H 464**. He said detectives or officers remove children based on facts from the scene not availability of foster homes or economic issues. The removal of a child is a last resort and decisions are made with the upmost of care. The Department of Health and Welfare already has the opportunity to look at these cases within 48 hours. This proposed legislation will only cloud the decision of the officers.

**Galen Carlson Fields**, Ada County Deputy Prosecuting Attorney, testified in **opposition** to **H 464**. He said there is real tension between the Department of Health and Welfare and law enforcement. They each have their own set of goals. This dialogue should not be in the middle of an emergency situation. The Child Protection Act does define the criteria for which law enforcement is looking. He said the bottom line is, the current system works. Law enforcement is trusted to make decisions and they have been doing a good job.

**Rep. Perry** said both sides deal with issues differently. These consultations prove to be very effective. There are a number of grey areas where law enforcement does not need to remove the child.

**SUBSTITUTE  
MOTION:**

**Rep. Nielsen** made a substitute motion to **HOLD H 464** in committee.

**Rep. Ringo** said further abuse of a child would be worse than being removed for a few days.

**VOTE ON  
SUBSTITUTE  
MOTION:**

Roll call vote was requested. **Substitute motion failed by a vote of 5 AYE, 8 NAY, and 4 Absent/Excused.** Voting in favor of the motion: **Reps. Nielsen, Sims, Malek, Ringo, and Wills.** Voting in opposition to the motion: **Reps. Luker, McMillan, Perry, Dayley, Packer, Trujillo, McDonald, and Meline.** **Reps. Bolz, Bateman, Horman, and Burgoyne** were absent/excused.

**VOTE ON  
ORIGINAL  
MOTION:**

**Chairman Wills** called for a vote on the original motion to send **H 464** to the floor with a **DO PASS** recommendation. **Original motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 4:28 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary



AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Monday, March 03, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1341</u></a>	Criminal Gang Enforcement Act	Ellie Somoza, Nampa City Prosecuting Attorney Sgt. Jason Cantrell, Nampa Police Department
<a href="#"><u>H 517</u></a>	Exceptions to Government Liability on Public Endowment Lands	Rep. Morse
<a href="#"><u>H 562</u></a>	Bond Issuance Reform	Brian Kane, Asst. Chief Deputy Attorney General
<a href="#"><u>H 542</u></a>	Public Defense Act	Rep. Bolz
<a href="#"><u>H 563</u></a>	Revenge Pornography	Rep. Malek
<a href="#"><u>HR 06</u></a>	Amendment to House Rule 74 - Attachés	Rep. Wills

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Monday, March 03, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Nielsen, Burgoyne

**GUESTS:** Brian Kane, Attorney General's Office; Mike Stoddard, Hawley Troxell; Kurt Holzer, ITLA; Kristen Atwood, ISA; Monica Hopkins, ACLU; August Cahill, Ada County Public Defender; Alan Trimming, Ada County Public Defender; Holly Koole, IPAA; Tony Poinelli, IAC; Eleonora Somoza, Canyon County Prosecuting Attorney; Jason Cantrell, Nampa Police Department

**Chairman Wills** called the meeting to order at 2:50 PM.

**S 1341:** **Ellie Somoza**, Nampa City Prosecuting Attorney, presented to the committee **S 1344** which would allow a gang enhancement to be filed in a misdemeanor or juvenile case. Because the current language of the Idaho Criminal Gang Enforcement Act says the enhancement may be used by indictment or information and misdemeanor charges and juvenile petitions are only charged by complaint or by petition, the language needed to be added. She said this was a technical oversight on the original legislation.

**Sgt. Jason Cantrell**, of the Nampa Police Department, said, since 2006, there has been a significant decrease of gang activity, drive by shootings, and the overall flaunting of gang members walking down the street in Canyon County. He attributed this to the Criminal Gang Enforcement Act. The Act has been a useful tool for law enforcement.

In response to a question, **Ms. Somoza** said the enhancement adds an additional year in jail to the sentence for gang-related activity. She said the original intent of this legislation was to include misdemeanors but the mechanism was not written to reflect that. A juvenile can be charged with a gang offense but the enhancement would not be charged unless they are waived to an adult court.

**MOTION:** **Rep. McDonald** made a motion to send **S 1341** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Perry** will sponsor the bill on the floor.

**H 517:** **Rep. Morse** presented to the committee **H 517** which adds liability exemptions for activities on State Endowment Lands and immunizes the state from liability for the use of any road, trail, easement, or woodcutting activities on Endowment Land. The bill arose out of procedures and implications for granting an easement to a private individual to cross State Endowment Lands. The Department of Administration, as a condition of easement, asked for a \$2 million liability policy, which amounted to a substantial amount of money in perpetuity. If one went through a procedure to get an easement, then those people are treated differently than members of the public, woodcutters, and individuals engaged in recreation whom have absolutely no kinds of insurance policies and exposes the state to liability.

**Rep. Morse** said language was added to the legislation originally presented to the committee. **H 517** now includes the language: any government entity and its employees acting in the course and scope of their employment without malice or willful or wanton conduct shall not be liable for any claim which is based upon third parties that injure themselves or members of the public when using any road, trail or easement or cutting wood on Endowment Lands.

**Kurt Holzer**, of the Idaho Trial Lawyers Association, testified **in opposition** to **H 517**. One of the fundamental roles of the Trial Lawyers Association is to deal with the issue of personal responsibility. This legislation deals with far more than Endowment Lands. It immunizes anything that is based upon acts of third parties who injure themselves or members of the public using any road. This includes any highway district. This is a broad grant of immunity. To the extent there needs to be immunity or actions on the Endowment Lands, Idaho does have a recreational use immunity statute. From this, the landowner is immune from suit. There is no liability.

**MOTION:** **Rep. Luker** made a motion to send **H 517** to General Orders with a committee amendment to move the language "on endowment land". Subsection 9 would read, "Is based upon the acts of third parties that injure themselves or members of the public on endowment land using any road, trail or easement, or cutting wood."  
**Motion carried by voice vote. Rep. Morse** will sponsor the bill on the floor.

**H 562:** **Brian Kane**, Assistant Chief Deputy with the Attorney General's Office, presented to the committee **H 562** which addresses two areas of bond issuance in need of reform. The first repeals the requirement the Attorney General approve the issuance of bonds by state universities, and city and county housing authorities. The second authorizes public bodies to delegate authority to determine actual terms and condition of bonds in accordance with parameters and specific instructions established by the governing body in its authorizing resolution or ordinance.

**Mr. Kane** said the Attorney General's office has nothing to do with the bond issues on those entities, yet they are asked about them because of this Code. He said they would have no idea if the bonds were done properly since they are not involved in the process. It becomes an obstacle instead of a benefit within these circumstances. From a legal standpoint, the state has taken great pains to say they are independent bodies, corporate and politic, to detach them from the state so they do not incur a liability on behalf of the state. By keeping the state in the mix, it keeps the argument alive the state is involved. They would replace the strike out provisions with a delegation provision of the Code. This would allow the participants to make an entry into the bond market when the interest rates are lower. This will make the process for bond issues more efficient and cost effective.

**MOTION:** **Rep. Bolz** made a motion to send **H 562** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Bolz** will sponsor the bill on the floor.

**H 542:** **Rep. Bolz** presented to the committee **H 542** which establishes a State Public Defender Commission. He explained the committee had seen this bill before but the Controller's Office had a concern about one section dealing with funds. JFAC analysts said these funds could be included with intent language within a trailer bill; therefore, the section was withdrawn resulting in **H 542**. Both the Sixth Amendment of the United States Constitution and Article 1, Section 13, of the Idaho Constitution provides for a public defender system for indigents. Unfortunately, Idaho is not meeting that requirement. This legislation will start the process of fixing that broken system.

**Rep. Bolz** said the language within this legislation sets up the Public Defense Act, the State Public Defense Commission, lists the seven members to be appointed to the commission, and references compensation for those members. The commission members will receive no honorarium, only reimbursement for expenses. The bill lists the duties of the State Public Defense Commission which are to promulgate rules and make recommendations to the Idaho Legislature on public defense system issues. This includes such things as core requirements for contracts, qualifications and experience standards, enforcement mechanisms, and funding. The commission style was chosen over an association because of its enforcement authority.

**Rep. Bolz** said this legislation modifies current code on how public defenders are set up in each county. It can be done in one of the following ways: a county office which can be joined with other counties within the same judicial district; contract with an existing office of public defender; or contract with a defending attorney. Because they do not meet constitutional muster, flat fee contracts would no longer be allowed. The Commission would be governed within the Department of Self Governing Agencies.

**MOTION:**

**Rep. Trujillo** made a motion to send **H 452** to the floor with a **DO PASS** recommendation.

**Monica Hopkins**, Executive Director of ACLU of Idaho, testified regarding **H 542** indicating a neutral position on the legislation. The ACLU of Idaho has been working on establishing a constitutional public defender system in Idaho. **H 542** does not go far enough in creating an independent, properly funded, comprehensive enough system the public can trust to function constitutionally. They are concerned that the proposed commission is not independent enough for the American Bar Association standards. The commission is only allowed to make recommendations to the legislature regarding core contract requirements, attorney certification and practice standards, enforcement mechanisms, data collection, and conflict cases. This eliminates the ability for independent oversight, making the commission subject to the political willingness of the legislature to approve and/or fund the essential constitutional work of the commission charged with overseeing the public defense delivery system. The ACLU will remain neutral until there is at least a companion bill providing substantial funding so competent public defenders can provide relief to the dedicated competent lawyers who are struggling under their case loads.

**Alan Trimming**, the Ada County Public Defender, testified that he shared the ACLU's opinion about the scope of **H 452**. He expressed his concerns with the language of the bill, specifically public defender term, compensation, and appointment qualifications. He suggested the language "so far as possible" perpetuates the characterization that public defenders are second class attorneys in comparison to prosecutors. There is no provision for staffing, resource and salary parity. He said he was concerned by the deletion of the term "not less than two years" because public defenders tend to be politically incorrect; they get asked to advocate for unpopular people who are accused of doing some pretty hideous things; and, they get into serious head butting contests with other agencies not to mention the courts. A new public defender needs a couple of years to develop a rapport.

**Tony Poinelli**, with the Idaho Association of Idaho Counties, testified **in support** of **H 542**.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Rep. Ringo** requested she be recorded as voting **NAY**. **Rep. Bolz** will sponsor the bill on the floor.

**H 563:**

**Rep. Malek** presented to the committee **H 563** which will change the video voyeurism law to provide protection to individuals whose pictures or videos of an intimate or private nature are shared without consent for purposes such as revenge, extortion, or humiliation. This legislation includes a new subsection which excludes interactive computer service, information service, and telecommunication service for content provided by another person, unless the provider intentionally aids or abets video voyeurism.

**Holly Koole**, with the Idaho Prosecuting Attorneys Association, testified **in support** of **H 563**.

**Monica Hopkins**, Executive Director of ACLU, testified **in opposition** to the way **H 563** is drafted. The ACLU is concerned this legislation has broad language which would criminalize protected speech under the First Amendment of the Constitution. Their main concern is Subsection 2(b) relating to dissemination. She said she understood the problem but wanted to narrowly tailor the language before this legislation passed so as not to infringe on the First Amendment. Any analysis should start with the point of view that sharing nude images, even if you fail to ask the subject's permission, is constitutionally protected free speech. As it is currently written, she said there were no exclusions for photos or videos that are newsworthy, photos one lawfully finds on the internet, or images an individual may not know the circumstances to know whether the subject intended it to be shared. She would like to see three provisions added to the law: malicious intent; actual harm; and an expectation of privacy in the original image as a supplement not a replacement to the knowledge requirement.

**John Dinger**, a Deputy Prosecutor with Ada County and a member of the Internet Crimes Against Children Task Force, testified **in support** of **H 563**. Under the current law, they cannot prosecute these types of crime because the reason for taking the images did not match the intent for posting them. This is a growing serious problem. These crimes are perpetrated against private individuals who need to be saved from being victimized. In response to a question, Mr. Dinger said if there is a question of constitutionality with free speech, it can be challenged in court.

**MOTION:**

**Rep. Packer** made a motion to send **H 563** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Malek** will sponsor the bill on the floor.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**HR 6:**

**Chairman Wills** presented to the committee **HR 6** which deals with the selection, removal, duties, and compensation of House attachés. This updated rule will reflect the current House practice of allowing the Speaker to select attachés and determine their compensation. This is a bipartisan rule change. There is majority and minority language within the resolution.

**MOTION:**

**Rep. Malek** made a motion to send **HR 6** to the floor with a **DO PASS** recommendation.

In response to a question, **Chairman Wills** said there is nothing broken in the system it will just speed up and simplify the process.

**VOTE ON  
MOTION:**

**Motion carried by voice vote.** **Rep. Wills** will sponsor the bill on the floor.

**ADJOURN:**      There being no further business to come before the committee, the meeting was adjourned at 4:26 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Wednesday, March 05, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#">S 1357</a>	Justice Reinvestment	Rep. Wills
<a href="#">S 1221aa</a>	Child Advocacy Center	Sen. Guthrie
<a href="#">S 1246</a>	Probate Bill	Robert Aldridge
<a href="#">S 1247aa</a>	Minor Guardianship	Robert Aldridge
<a href="#">S 1340</a>	Automated External Defibrillators	Robert Aldridge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, March 05, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Nielsen

**GUESTS:** Paul McPherson, CARES Clinic; Bob Aldridge, TEPI; Kristen Atwood, ISA; Holly Koole, IPAA; Kaley Sparling, parent; Rebecca Lovelace, NFJC, Idaho Coalition; Adrean Cavener, American Heart Association; Senator Patti Anne Lodge; David High, retired; Sean Schapach, Intern; Don Hudson, Lincoln County; Brent Reinke, Idaho Department of Correction; Molly Kalzmarek, St. Lukes CARES/Idaho Network of CAC's

**Chairman Wills** called the meeting to order at 1:32 PM.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**S 1357:** **Rep. Wills** presented to the committee **S 1357** which will increase public safety and contain the cost of corrections. The bill addresses three challenges facing Idaho's criminal justice commission: recidivism, inefficient use of prison space, and insufficient oversight of recidivism reduction investments. By the year 2019, the growth in the prison population is projected to increase by 16%. He said the objectives in this bill are estimated to avert nearly all of this growth and reduce recidivism by 15%. This will save the state of Idaho up to \$288 million and enable the state to reinvest \$33 million in probation and parole officer training, community treatment, and quality assurance measures. The fiscal impact of implementing these recommendations is \$2 million from the General Fund and \$299,999 in dedicated funds for 2015.

**Rep. Wills** said this process took longer than anticipated because it was made clear they wanted every group involved to have a voice in the bill so, when presented, it would be with a united front. All three branches of government support this bill. Written using statistical data, this bill's primary goal is to get rid of the revolving door of recidivism to a large degree in the next few years. That has been a huge toll on the Idaho economy for a number of years.

In response to a question, **Rep. Wills** said, as they are currently, the Department of Health and Welfare would be in charge of mental health. The Department will have to pick up the costs from indigents but it should not significantly impact their budget. These costs will not be taken out of the General Fund.

**Holly Koole**, of the Idaho Prosecuting Attorneys Association, testified in support of **S 1357**. In response to a question, Ms. Koole said this bill would not change sentencing practices in Idaho.



**David High** testified in support of **S 1357**. He said this legislation shores up the probation and parole service. It clarifies the legislative intent in regard to decisions made by the Parole Commission on granting parole. The required annual reports on parole decisions are an important way of monitoring the goal of protecting society from the most violent and high-risk offenders. This bill references swift, certain, and graduated sanctions and rewards for parolees. He explained, it provides a variety of interim sanctions that recognize the mistake and provide for a punishment, but would allow for a parolee to stay out prison. This takes into consideration that prison is the most expensive option for a offender. This is a great first step in reforming our criminal justice system.

**Brent Reinke**, Director of the Department of Correction, testified in support of **S 1357**. The Department of Correction supports this legislation for three main reasons. It strengthens supervision, tailors sanctions, and assesses and provides outcome data. The resulting data points from the reporting requirements will measure successes. This will be very educational and help to improve the Department of Correction's relationship with the courts, the Governor's office, the Budget Office, and the Idaho Legislature. There will be both cost saving and cost avoidance. The Department of Correction will make sure the requirements within this legislation are met in a timely fashion.

**MOTION:** **Rep. Bateman** made a motion to send **S 1357** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Wills** will sponsor the bill on the floor.

**Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

**S 1221aa:** **Sen. Guthrie** presented to the committee **S 1221aa**, which recognizes Child Advocacy Centers as part of the interagency multidisciplinary team and as a provider of child forensic interviews. The multidisciplinary team includes law enforcement, Department of Health and Welfare, Child Protection Risk Assessment, Prosecuting Attorney offices, and other health professionals. The most important change to the code is allowing Child Advocacy Centers to conduct interviews. Because these centers receive funding from other avenues, like Medicaid, insurance, grants, health care organizations, and local entities, no funding is being requested.

**Sen. Guthrie** said, one in four girls and one in six boys are sexually abused before they are 18 years old. Child Advocacy Centers provide a child friendly setting where interviews, examinations, and counseling take place. They make the kids feel at ease. This helps law enforcement because the more reliable and defensible the testimony is, the more likely they are to get a good outcome in court. The follow-up counseling is a real benefit to the children to help them adjust to life after a traumatic event. This bill simply puts into Code a practice that has been in place in Idaho's communities for some time. He said the two main advantages to having these Advocacy Centers in Code are to provide better opportunities for federal funding and to create more stead in the prosecution process in case the validity of the testimony is called into question.

In response to a question, **Sen. Guthrie** said the six centers in the state are locally operated, but there is a national organization which recognizes their certification and level of counseling training.

**Rep. Luker** said he was struggling with the idea of putting these Centers into Code because he believes this will lead to the request of state monies for the Centers. The Centers are functioning well the way they are now and there doesn't seem to be a need for change.

**MOTION:** **Rep. Malek** made a motion to send **S 1221aa** to the floor with a **DO PASS** recommendation.

In response to a question, **Sen. Guthrie** said the state is only recognizing Child Advocacy Centers' involvement in the multidisciplinary team.

**Paul McPherson**, a physician with St Luke's Children's Hospital and Director of the CARES program with the Child Abuse Unit, testified **in support of S 1221aa**. The Idaho network of Idaho Child Advocacy Centers provide training for social workers and the multidisciplinary team as currently defined in Idaho Code. He detailed examples of child abuse and neglect in Boise and how he has become involved in the evaluation of child abuse and neglect. He said children who have been abused and neglected are at high risk for both short and long term medical and mental health conditions. Certain therapy models, such as trauma focus cognitive behavior therapy, have been shown in both short and long term studies to mitigate some of those effects. The Child Advocacy Centers provides training to those multidisciplinary partners at no cost both in terms of interviewing and medical evaluations. Child Advocacy Centers are accredited by the National Children's Alliance which require the achievement of certain standards. He explained he does not foresee any state oversight because it would call into question the Child Advocacy Centers' objective evaluation of child abuse and neglect cases.

**Kaley Sparling** testified **in support of S 1221aa**, speaking on behalf of parents of abused children. These Centers are a glimmer of light and hope for the parents and children. They help protect the children and give an age appropriate place for interviews. She said without the language recognizing the Centers in Code, defense attorneys could bring this up in court to the detriment of the case.

**VOTE ON  
MOTION:**

**Motion carried by voice vote. Reps. Luker, Sims, and McMillan** requested they be recorded as voting **NAY**. **Rep. Packer** will sponsor the bill on the floor.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**S 1246:**

**Robert Aldridge**, of the Trust and Estate Professionals of Idaho, presented to the committee **S 1246**. He said this is a housekeeping bill to remove incorrect terms in the Idaho Probate Code. As changes have been made to the Idaho Probate Code, some cross-references that should have been deleted or modified have been missed. This has caused confusion for individuals who find the incorrect cross-references and think they still exist in the Idaho Probate Code. He said this bill corrects two areas. First, this bill deletes references to the "family allowance", which was eliminated from the Idaho Probate Code several years ago. Second, the time period for presentation of certain claims in probate was changed in the Uniform Probate Code from two years to three years, but the reference to that time period in this code section was not properly changed.

**MOTION:**

**Rep. Sims** made a motion to send **S 1246** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Sims** will sponsor the bill on the floor.

**S 1247aa:**

**Robert Aldridge**, of the Trust and Estate Professionals of Idaho, presented to the committee **S 1247aa**, which concerns when and how a guardianship, especially of a minor, can be terminated or modified. He said the existing Idaho Probate Code does not have provisions for the termination of the guardianship of minors if the termination is not because of death, resignation or removal of the existing guardian, or because of the minor marrying, dying, being adopted, or becoming of age.

**Mr. Aldridge** said a guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority. This termination does not affect liability for prior acts, nor obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until the court has approved it. A testamentary appointment, under an informally probated will, terminates if the will is later denied probate in a formal proceeding. In a guardianship or conservatorship proceeding, it also includes any governmental agency paying or planning to pay benefits to the ward or protected person and any public or charitable agency that regularly concerns itself with methods for preventing unnecessary or overly intrusive court intervention in the affairs of persons for whom protective orders may be sought and that seeks to participate in the proceedings.

**Mr. Aldridge** said the court can modify the type of appointment, or the powers of the guardian if the prior appointment is either excessive or insufficient, or if the capacity of the ward to pay for support, care, education, health, and welfare has changed sufficiently. This gives the court the flexibility to tailor the guardianship to the actual needs of the ward as those needs change over time. The court, before terminating a guardianship, must make sure appropriate protections are in place to protect the rights of the ward. This might involve the creation of protected accounts, or verification of where the ward is living, etc.

**Mr. Aldridge** said the burden is on the existing guardian to show the ward's best interests require the guardianship to be continued, otherwise the guardianship will be terminated. This makes a more level playing field for parents who have lost the custody of their child, to regain the custody, and makes the presumption in favor of family reunification. The term "best interests" is well understood by attorneys and by courts and has a long history of its meaning and application.

**MOTION:**

**Rep. Dayley** made a motion to send **S 1247aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.

**S1340:**

**Robert Aldridge**, of the Trust and Estate Professionals of Idaho and the Quality of Life Coalition, presented to the committee **S 1340**. This bill relates to automated external defibrillators (AED), which are portable devices that check heart rhythms. If needed, an AED can also send an electric shock to the heart to try to restore a normal rhythm. Immediate treatment with an AED can be lifesaving. AEDs not only come with instructions, but will also give voice prompts to let the operator know if and when to send a shock to the heart. The AED will not allow a shock to be sent if it is not appropriate to do so. The National Institute of Health states on its website that: "Automated external defibrillators (AEDs) are safe to use. There are no reports of AEDs harming bystanders or users. Also, there are no reports of AEDs delivering inappropriate shocks."

**Mr. Aldridge** said when Section 5-337, Idaho Code, was passed in 1999, AEDs were relatively new and much less automated, and potentially might be mishandled in use. For caution, the statute required a physician to prescribe, be involved in, and supervise the training, notification, maintenance, and guidelines for use of the device. None of that has turned out to be needed. The physician language in the statute has been mostly ignored. The Red Cross and the Heart Association do the training, and the manufacturer provides the maintenance schedules and guidelines. There is no other requirement in other law, national or local, that requires a prescription for the AED or physician oversight of training or maintenance. AEDs are widely available for purchase, including for home use. This bill simply removes the physician requirements from the statute.

**Mr. Aldridge** said the language on limitation of liability for writing a prescription still retains the reference to a physician since some existing AEDs may have been placed with a prescription. The passage of this bill will create a statutory method in tune with actual practice and with the level of safety of AED's. Since there is no need to involve a physician, it will eliminate potential expense. The bill still requires training, maintenance, and notification of the appropriate agency so they know where the AED is when they respond to an emergency. The training also makes staff or volunteers aware of where the AED is and how to use it.

**MOTION:** **Rep. Trujillo** made a motion to send **S 1340** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Trujillo** will sponsor the bill on the floor.

**Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes from the February 19, 2014, meeting. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:56 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Friday, March 07, 2014**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1293</a>	Adoption	Robert B. Luce, Division of Family and Community Services, Department of Health and Welfare
<a href="#">S 1251</a>	POST- Relating to the Definition of a Volunteer Reserve Officer	Rory Olsen, POST Deputy Division Administrator

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Friday, March 07, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Nielsen, Bateman, McMillan, Perry, Packer, Meline

**GUESTS:** Rob Luce, Idaho Department of Health and Welfare; Bill Flink, POST

**Chairman Wills** called the meeting to order at 1:31 PM.

**S 1293:** **Robert Luce**, Administrator of the Division of Family and Community Services with the Department of Health and Welfare, presented to the committee **S 1293** which pertains to technical corrections in the termination of parental rights statutes, Title 16, Chapter 15, Idaho Code and the adoption statutes, Title 16, Chapter 20, Idaho Code. During the 2013 Legislative Session the Legislature passed **H 214**, concerning putative fathers which clarified the statutes and strengthened adoptions and permanency in Idaho. Specifically, it established, among other things, a date and time certain for putative fathers to take action to protect their rights with respect to children born out-of-wedlock. Following the passage of **H 214**, it was discovered they had overlooked establishing a date and time certain when it comes to certain private adoptions like those involving step parents. This legislation is intended to address that technical oversight. He said he was not aware of any opposition to this technical correction.

**MOTION:** **Rep. Horman** made a motion to send **S 1293** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Sims** will sponsor the bill on the floor.

**S 1251:** **Rory Olsen**, POST Deputy Division Administrator, presented to the committee **S 1251** which amends Section 19-5101(d) of Idaho Code to add "or volunteer reserve officer" to the definition of Peace Officer. Currently, volunteer reserve officers are not addressed in the definition of a peace officer; however, volunteer reserve officers have existed in Idaho law enforcement since 1989. Volunteer reserve officers serve as a vital asset to law enforcement agencies throughout Idaho and especially to smaller agencies that have limited resources. Idaho POST has been certifying volunteer reserve officers for patrol functions since 1989 and there are currently over 290 certified volunteer reserve officers serving in this capacity. POST has certified volunteer reserve officers used for patrol functions under the current definition of Peace Officer found in Idaho Code Section 19-5101(d) with further definition within Administrative Rules.

**Mr. Olsen** said while recently reviewing the provisions for volunteer reserve officers and considering potential future uses for reserve officers, the POST Council and the Council's legal advisor felt it would be prudent to include volunteer reserve officer in the definition of a peace officer. The main concern is to make sure volunteer reserve officers are included in the definition of Peace Officer, to prevent any possible legal challenges that might arise regarding whether a volunteer reserve officer had the legal authority to perform as a Peace Officer.

In response to questions from the committee, **Mr. Olsen** said there are three identified levels of volunteer reserve officers. Reserve Level Three officers are those who serve in jeep patrols, posse patrols, and search and rescue teams. These reserve officers are hired and retained by the agency. POST has no involvement in Level Three hires. Reserve Level Two officers are individuals that are a ride-along partner with an officer. They are at all times to be in the presence of a fully certified law enforcement officer. These reserve officers can only act as a back up for that fully certified officer. The only involvement POST has in its Rules with a Reserve Level Two is what kind of minimal training is needed to fulfill that function. Reserve Level One Officers can ride in a vehicle on their own but the agency must have a fully certified officer to act as a supervisor for that individual. They are allowed to perform and make arrests on their own.

Members of the committee expressed concern about the broad scope of the definition. They said the language of the bill does not limit the definition of volunteer reserve office solely to Level One officers. Even if their Rules differentiate the levels, the Code would not and Statutes always supersede Rules.

**MOTION:** **Rep. Luker** made a motion to **HOLD S 1251** in committee.

**Chairman Wills** said he would officially request an opinion of the Attorney General on the authority of the POST volunteer reserve officers.

**VOTE ON MOTION:** **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:21 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30PM or Upon Adjournment**  
**Room EW42**  
**Tuesday, March 11, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1351</u></a>	Battery Against Health Care Workers	Emily McClure, Idaho Medical Association
<a href="#"><u>S 1248</u></a>	Testamentary Appointments	Robert Aldridge, TEPI
<a href="#"><u>S 1249</u></a>	Time Limits for Summary Administration and Small Estate Affidavits	Robert Aldridge, TEPI
<a href="#"><u>S 1240aa</u></a>	DNA Collection	Sen. Rice, Rep. Luker
<b>Presentation</b>		
	Idaho Sheriffs Report on Jails	Paul Wilde, Bonneville County Sheriff  Michael Kane, Idaho Sheriffs Association

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

Francoise Cleveland  
Room: EW56  
Phone: 332-1127  
email: [hjud@house.idaho.gov](mailto:hjud@house.idaho.gov)



MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Tuesday, March 11, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Wills** called the meeting to order at 2:44 PM.

**S 1351:** **Emily McClure**, representing the Idaho Medical Association, presented to the committee **S 1351** which makes it a felony to batter health care workers while they are performing their duties or because of their profession. She said battery against healthcare workers is a serious problem in Idaho, particularly in emergency rooms and by those who are high or seeking drugs. Healthcare workers are in need of added protection because they have a higher rate of violent incidents than other professionals. A healthcare worker is three times more likely to be the victim of a violent crime in the workplace than any other private sector professional. They are often required by federal law to treat violent people, and treating them requires they be in close physical proximity to them. Medical professionals are often targeted outside the medical environment by those looking for drugs, particularly in rural communities where they are more readily recognized.

**Ms. McClure** said they began this effort last year with a bill that would have added health care workers to the list of other professionals afforded enhanced protection. This bill differs from last year's bill in that it only applies to battery, not assault, and they decreased the maximum potential penalty from five years to three years. She emphasized this is a maximum potential penalty. Like last year's bill, it still includes a qualifier the battery must take place "when the victim is in the course of performing his or her professional or employment duties or because of the victim's professional or employment status."

In response to a question, **Ms. McClure** said this legislation is one facet of a multifaceted attempt to curb violence in the healthcare workplace including security, self defense training, and specific facility programs.

**Jim Baugh**, of the Disability Rights of Idaho, testified in opposition to **S 1351**. He said this legislation imposes a sentence to anyone who commits a battery against a licensed, certified or registered healthcare provider in Idaho. This not only applies to anyone in an emergency room but also to assisted living facilities, home health programs, state and private psychiatric hospitals, certified family homes, and group homes for people with developmental disabilities. In all of these facilities where people interact and are in constant contact with professionals, there are individuals who have a hard time controlling their behavior. There are many who have developmental disabilities or traumatic brain injuries whose ability to control their tantrum or rages are minimal or nonexistent. He said he is concerned this bill criminalizes behaviors which are a basic function of someone's disability. Our criminal justice system won't prosecute people who are incapable of forming an

intent but that is a very high bar. These people need behavior modification not a criminal sentence.

**Wallace Maxwell**, a nurse, testified **in support** of **S 1351**. He said this legislation is not just about making sure the perpetrator understands the seriousness of the crime; it also shows the healthcare provider someone is working to protect and support them. This legislation marks a culture shift on how violence to the healthcare provider is viewed.

**Julie Hoerner**, Director of the Emergency and Trauma Services of Kootenai Health and representing Kootenai Health, the Nurse Leaders of Idaho, and the Emergency Nurses Association, testified **in support** of **S 1351**. She said the cost of these assaults on our health care providers is significant. Aside from the cost of the physical trauma an employee experiences, there is also low moral, increased stress, absenteeism, lost wages, time away from work, family impact, and turnover. This is impacting the ability to hire nurses into the profession. She said there are an alarming number of people who have not filed a report because they believe nothing will happen. She hopes this legislation will get the word out so the number of assaults decrease.

**Holly Koole**, of the Idaho Prosecuting Attorney Association, testified **in support** of **S 1351**. In response to a question, Ms. Koole said the criminal justice system provides numerous safeguards for the mentally ill or vulnerable who cannot form the intent to commit a crime.

**Gabriel McCarthy**, a private attorney, testified **in opposition** to **S 1351** in its current form. He said this legislation would not correct the harm presented and it may actually harm those it is supposed to protect. Because battery is an impulsive action, this felony would not deter. In addition, there is no exception for coworkers. It only takes one person to have a conflict at work and suddenly there is a potential for a felony to be charged. He said what is needed are proactive policies to address the problem before the battery occurs.

**Toni Lawson**, of the Idaho Hospital Association, testified **in support** of **S 1351**. She said her top concern is the safety and wellness of those who care for others around the state. There is particular concern for rural hospitals which are staffed by two or three people at a time. They do not have the extra staff for security. She explained health care workers do not fight back because their role is to heal not to fight. Healthcare workers are held to a higher standard and that employee may face reprimand if they fight back.

**Clement Abbondandolo**, the Security Director with St. Luke's Hospital, testified security departments in most big hospitals respond to 15 to 20 combative or assaultive patients per month. In the eleven months he has been in his position, only two of those have had charges filed. The bulk of nursing staff does not file charges because they don't believe anything will come of the charges.

**Monica Hopkins**, Executive Director of the ACLU of Idaho, testified **in opposition** to **S 1351**. She said the ACLU is concerned about the broad scope of the bill. Healthcare professionals should be encouraged to file under existing statutes. She explained many of the examples heard today would qualify for aggravated battery which would result in a longer jail sentence than provided in this legislation.

**MOTION:**

**Rep. Packer** made a motion to send **S 1351** to the floor with a **DO PASS** recommendation.

**Rep. Luker** said testimony today highlighted how the current law is not working; however, it seems the real matter is, current laws are not being used. The legislature is trying to implement laws that are data driven and there was no data presented to support this law.

**Rep. McDonald** said this is a serious problem and the legislature needs to support the healthcare worker like the law does for a police officer or government official.

**ROLL CALL  
VOTE:**

Roll call vote was requested. **Motion carried by a vote of 12 AYE, 4 NAY, 1 Absent/Excused. Voting in favor of the motion: Reps. Bolz, Bateman, Perry, Dayley, Horman, Malek, Packer, McDonald, Burgoyne, Meline, Ringo, and Wills. Voting in opposition to the motion: Luker, Nielsen, McMillan, and Sims. Rep. Trujillo was absent/excused. Reps. Malek and McDonald will sponsor the bill on the floor.**

**Michael Kane**, of the Idaho Sheriffs Association, said the Idaho Sheriffs Association is required to report to the Legislature once every three years but it does not need to be an oral presentation. He asked the Secretary to forward their presentation to the committee in written form. (See attached.)

**S 1248, S 1249,  
and S1240aa:**

**Chairman Wills** announced the remainder of bills on the agenda, **S 1248, S 1249, and S 1240aa** would be rescheduled and heard before the committee on March 13, 2014.

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 4:12 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Thursday, March 13, 2014**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1248</u></a>	Testamentary Appointments	Robert Aldridge, TEPI
<a href="#"><u>S 1249</u></a>	Time Limits for Summary Administration and Small Estate Affidavits	Robert Aldridge, TEPI
<a href="#"><u>S 1374aa</u></a>	Relating to the Correctional Industries Act	Sen. Lodge
<a href="#"><u>S 1353</u></a>	Juvenile Justice Refinement	Judge Jack Varin
<a href="#"><u>S 1375</u></a>	Suspension of Judgment and Sentence	Michael Henderson, Legal Counsel Idaho Supreme Court
<a href="#"><u>S 1354aa</u></a>	Bad Faith Patent Assertion	Mike Reynoldson, Micron Amy Lombardo, Parsons, Behle & Latimer
<a href="#"><u>S 1240aa</u></a>	DNA Collection	Rep. Luker

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry	Rep Trujillo
Vice Chairman Luker	Rep Sims	Rep McDonald
Rep Nielsen	Rep Dayley	Rep Burgoyne
Rep Bolz	Rep Horman	Rep Meline
Rep Bateman	Rep Malek	Rep Ringo
Rep McMillan	Rep Packer	

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Thursday, March 13, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Perry

**GUESTS:** Ray Stark, Boise Metro Chamber; John Eaton, Realtors; Brett DeLange, Idaho Attorney General's Office; Michael Henderson, Supreme Court; Bob Aldridge, TEPI; Mike Brassey, Idaho Bankers Association

**Chairman Wills** called the meeting to order at 1:36 PM.

**MOTION:** **Rep. Meline** made a motion to approve the minutes of February 27, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 3, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 5, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 7, 2014. **Motion carried by voice vote.**

**S 1248:** **Robert Aldridge**, representing the Trust and Estate Professionals of Idaho, presented to the committee **S 1248**. He said this bill is concerned with the testamentary appointment, through a will, of a guardian for a minor or developmentally disabled child of the decedent. The ability of a parent to appoint a guardian for a minor or developmentally disabled child has been in the Idaho Probate Code for many years. This procedure provides an inexpensive and quick way to get a guardian in place for a minor or developmentally disabled child if the parent dies. He said a question not answered in the current code is how to proceed if the nominated guardian does not, or cannot, accept the nomination. Normally, the will making the nomination would have a priority list of additional nominations, but the Idaho Probate Code does not provide any guidance about the use of those additional nominations.

**Mr. Aldridge** said this bill provides a clear solution to the situation by providing a method, paralleling the one used for the first named nominee to be guardian. It also validates the use of a priority list of nominees in the will. Since it is essential a guardian be put in place as quickly as possible, the bill imposes a thirty day time limit and also describes other situations in which the next named guardian could proceed, such as the death or declination to act or ceasing to act of the proposed guardian. It also preserves and clarifies the right of a minor, if age 14 or more, to object to the appointment and the effect of such an objection. Basically, the next nominee then can accept appointment, but the minor still has the right of objection.

**MOTION:** **Rep. Bateman** made a motion to send **S 1248** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

**S 1249:** **Robert Aldridge**, representing the Trust and Estate Professionals of Idaho, presented to the committee **S 1249**. He said this bill concerns the time limits under the Idaho Probate Code within which certain actions may be brought. Summary Administration under Section 15-3-1205, Idaho Code, and the Small Estate Affidavit under Section 15-3-1201, Idaho Code, have for many years been thought by the practicing bar and by courts to be exempt from the three year limitation on general probate proceedings under Section 12-3-108, Idaho Code. This has allowed those two procedures to be an easy, efficient, and an inexpensive way to pass property to the correct heirs if a standard probate is barred by the three year limitation. He explained recently some courts have held to the contrary, and, in some districts, judges in the same district have ruled differently on that question. This has lead to confusion and to arbitrary denial of the procedures in cases where they should be allowed. There are very limited and expensive alternatives if summary administration cannot be used. This bill eliminates that confusion by clearly stating the two procedures are not subject to the three year limitation.

**MOTION:** **Rep. Nielsen** made a motion to send **S 1249** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Horman** will sponsor the bill on the floor.

**S 1374aa:** **Senator Lodge** presented to the committee **S 1374aa**. She said although information from the U.S. Immigration and Custom Enforcement Agency declares every job taken by an illegal worker is a job taken from a lawful U.S. worker; however, the truth is, farmers cannot get enough laborers to take on seasonal work in our Idaho agricultural industry. Farmers across the nation, as well as Idaho, are suffering crops losses because there are not enough laborers to work and harvest crops. Even though there are people seeking work, they are not taking field positions. Idaho agriculture needs a stable supply of workers.

**Sen. Lodge** said this legislation will allow inmate laborers to work for private employers in the production, harvesting and processing of perishable Idaho agricultural food products. Inmates must be lower risk and volunteer for the work. The use of inmate labor cannot result in the displacement of employed workers within the local region in which the agriculture work is being performed. All monies derived by the inmates would be placed in the Correctional Industries Betterment Account and deductions would be made from the inmates pay to offset the transportation to work, the security that must surround them, and other costs associated with the program. Deductions will also be made to satisfy court ordered restitution, fines, and legal judgements, such as child support. Remaining funds would be placed within a reentry fund and the inmates personal commissary fund. Ninety-five percent of the inmates will return to the communities. The opportunity to have restitution and fines paid before release will give the inmate a better chance for reentry into society. She said work experience will help them get a future job and the money will help pay for their keep. The Justice Reinvestment project has brought to our attention, recidivism and the problem it proposes to the State of Idaho. Fifty-three percent of those in our prison system return within a three year period of time. This bill can change and better their lives.

**MOTION:** **Rep. Trujillo** made a motion to send **S 1374aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Bolz** will sponsor the bill on the floor.

**S 1353:**

**Judge Jack Varin** presented to the committee **S 1353**. He said he is helping the National Campaign to Reform State Juvenile Justice Systems. Working with a group of stakeholders, they have gleaned the unintended consequence of a juvenile court record is hampering youthful offenders obtain jobs, go to college, and join the military. They identified several long term projects to help address this concern: strengthening Idaho's diversion program; addressing expungement; and sealing of juvenile court records. This year they identified a need to clarify the courts authority to dismiss an information adjustment when granted by a judge and to provide the court with authority to dismiss a juvenile offender's case upon completion of a juvenile drug court, mental health court, or other authorized problem solving court.

**Judge Varin** said before filing a juvenile petition a prosecutor can decide to divert a juvenile case. If diverted, the case would be handled through some sort of community program such as an Accountability Board or Youth Court. There would be no public court record. If a case is filed, the judge can grant an informal adjustment. Because the case is filed, there is a public court record that is noted in the repository. In granting an informal adjustment, the judge may require something as simple as an apology, community service, or to complete a community program. The judge can also require a full probation with strict terms and conditions including suspended detention time. The practice varies around the state as to whether the case is eventually dismissed or not.

**Judge Varin** said this legislation specifically clarifies a case can be dismissed upon successful completion of the informal adjustment. A dismissal is a termination of the case, thus starting the time for the youthful offender, if appropriate, to have the case expunged. Upon expungement, the case is actually sealed and placed in a separate file system. The court can order other agencies to "expunge" their record as well. The offender, by statute, can report he has had no such case. Expungement takes a separate proceeding. Currently, adult Problem Solving Court participants can have their cases dismissed, but the same provision was not provided in the juvenile system. Dismissal of the case creates a good incentive to participate and successfully complete the Problem Solving Court program.

**MOTION:**

**Rep. Nielsen** made a motion to send **S 1353** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Nielsen** will sponsor the bill on the floor.

**S 1375:**

**Michael Henderson**, Idaho Supreme Court Legal Counsel, presented to the committee **S 1375**. He said this bill has been recommended by the Supreme Court to correct and improve Idaho Code §19-2604. This statute allows certain persons to apply to the court to have their criminal convictions set aside or, in some cases, to have a felony conviction reduced to a misdemeanor. Subsection (1) of the statute, as it is now written, applies to defendants who were placed on probation and not found to have committed a violation of the terms of probation. It also applies to persons who successfully complete a drug court or mental health court program, and who are not found to have committed any probation violations after completing the program. In order to be eligible for relief under the statute, these persons must show: (1) that there is no longer cause for continuing the period of probation; and (2) that granting relief would be compatible with the public interest. Even where these showings are made, the decision to set aside a conviction or to reduce a felony conviction to a misdemeanor is within the discretion of the court.

**Mr. Henderson** said one of the issues that gave rise to this bill involved the requirement a defendant show "there is no longer cause for continuing the period of probation." For many years, courts have granted relief under the statute to persons who successfully completed probation with no probation violations and who have been productive citizens for quite some time. Last year, the Supreme Court pointed out in *State v. Guess*, a person in that position may not be eligible for relief if the language of the statute is read literally. The requirement the individual show that "there is no longer cause for continuing the period of probation" seems to imply an application to have a conviction set aside or reduced can be made only if that person is still on probation. This would mean a person who is still on probation could obtain relief under the statute, while a person who has actually completed probation with no probation violations could not do so. The statute would now provide the person seeking to have a conviction set aside or reduced would have to show "there is no longer cause for continuing the period of probation should the defendant be on probation at the time of the application." So if the person seeking relief had completed probation, this showing would not have to be made.

**Mr. Henderson** said the bill also allows some persons to seek relief who cannot do so now because of the technical wording of the statute. These include: persons who are sentenced to only pay a fine or court costs, and do not receive a suspended sentence; persons who are convicted of a felony but who are not required to serve a term in the custody of the Board of Correction because they are only sentenced to period of a year or less in the county jail; and defendants who plead guilty and who then successfully complete a drug court or mental health court program before sentencing. The bill also removes the language requiring the court to find relief "be compatible with the public interest," and requires instead a finding that good cause has been shown for granting relief. The "compatible with the public interest" language has caused some confusion as to whether it requires a defendant to show relief would actually serve some public interest, or that it simply wouldn't be contrary to the public interest. The "good cause" standard is the one most often used to guide a court's exercise of discretion, and would allow a court to take any possible violation of the public interest into account.

**Mr. Henderson** said the new subsection (5) would ensure a violation of the terms of an agreement of supervision with the Board of Correction would not by itself preclude relief. The defendant would be ineligible for relief only upon a finding of a probation violation by the court.

**Chairman Wills** turned the gavel over to **Vice Chairman Luker**.

**MOTION:**

**Rep. Malek** made a motion to send **S 1375** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Nielsen and McDonald** requested they be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

**Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

**S 1354aa:**

**Mike Reynoldson**, Government Affairs Manager for Micron Technology, presented to the committee **S 1354aa** which prevents 'bad faith' assertions of patent infringement in the State of Idaho. He said Micron Technology is very dependent on Research and Development. They are the global leaders in the number of patents they hold. Innovation is the key to their success. Annually, they spend approximately \$1.5 billion in research and development. This 'bad faith' patent assertion bill is one of many reforms needed. Typical 'bad faith' activities come through the use of vague, threatening letters to innocent businesses. Threats of patent infringement are made and the business is asked to pay for a license in order to avoid patent litigation which is expensive and time consuming. He said the bill does not prevent 'good faith' patent assertion and even gives some guidelines to what that looks like. This, in no way prevents anyone's ability to pursue 'good faith'



infringement. Other states have successfully put these types of statutes in place. It sends the right message to patent trolls, along with a message to Congress. It will give pause to those who engage in 'bad faith' activity before sending their threatening letters to Idaho.

**Amy Lombardo**, an attorney with Parsons, Behle & Latimer, said because patent trolls cast a wide net, any business can become a victim. She said the bill adds a new chapter to the Idaho Consumer Protection Act, then detailed the bill for the committee.

**Mike Brassey**, representing the Idaho Bankers Association, testified **in support of S 1354aa**. He said this is a real problem for businesses. This legislation requires people to tell the business the details of the claim so a determination can be made if legal counsel is needed.

**John Eaton**, the Government Affairs Director with the Idaho Realtors Association, testified **in support of S 1354aa**. He said realtors are often hit by these patent trolls. It is sometimes cheaper to pay the request than it is to litigate.

**Jay Larsen**, President and CEO of the Idaho Technology Council, testified **in support of S 1354aa**. He said his membership is excited about this legislation because ideas are the lifeline of companies. This is a pathway to help deal with some bad citizens.

In response to a question, **Ms. Lombardo** said there are no criminal provisions in this legislation.

**MOTION:** **Rep. Sims** made a motion to send **S 1354aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Malek and Sims** will sponsor the bill on the floor.

**S 1240aa:** **Rep. Luker** presented **S 1240aa** to the committee which clarifies that DNA samples may be collected only upon the conviction or guilty plea to a felony or attempted felony, or which a warrant obtained through a finding of probable cause. He said our laws allow the DNA collection upon conviction of a felony crime. Recently the U.S. Supreme Court decided DNA collection can be taken upon arrest. That raises a concern with the Idaho Constitution of how far the collection of evidence should go without a warrant.

**MOTION:** **Rep. Nielsen** made a motion to send **S 1240aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Luker** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:51 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

**AMENDED AGENDA #1**  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Monday, March 17, 2014**

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">S 1393</a>	Criminal Justice Reinvestment Oversight Committee	Sen. Lodge
<a href="#">S 1394</a>	Judicial Salaries	Sen. Davis Rep. Moyle
	<b>Presentation:</b> A "Woods" Project	Dept. of Correction Idaho Supreme Court

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman Wills	Rep Perry
Vice Chairman Luker	Rep Sims
Rep Nielsen	Rep Dayley
Rep Bolz	Rep Horman
Rep Bateman	Rep Malek
Rep McMillan	Rep Packer

Rep Trujillo
Rep McDonald
Rep Burgoyne
Rep Meline
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Monday, March 17, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Perry

**GUESTS:** Don Drum, PERSI; Senator Patti Anne Lodge, Senate Judiciary and Rules Committee

**Chairman Wills** called the meeting to order at 1:31 PM.

**S 1394:** **Senator Davis** presented to the committee **S 1394** which would adjust judicial salaries. He said the Courts have asked the legislature to invest in the courts by doing three things: (1) update their technology; (2) shift the management of the judge's retirement funds; and, (3) address compensation of judges. This legislation was drafted to concentrate on the third item, judge's pay, by increasing the overall salaries of the different levels of judges and relieving salary compression. He said the pool of candidates for District Judges is not as large as Magistrate Judges because the salary is only \$5,000 more plus they have to run for election. The provisions in this bill will give more incentive for applicants to the District Judge position.

**MOTION:** **Rep. McDonald** made a motion to send **S 1394** to the floor with a **DO PASS** recommendation.

**Rep. Burgoyne** invoked Rule 38 stating a possible conflict of interest but that he would be voting on the legislation.

**Rep. Moyle** stated this is an issue needing to be resolved.

**VOTE ON  
MOTION:** **Motion carried by voice vote. Reps. Moyle and Wills** will sponsor the bill on the floor.

**S 1393:** **Senator Lodge** presented to the committee **S 1393** which will create a Criminal Justice Reinvestment Oversight Committee. The committee would monitor performance and outcome measures as set forth by the Justice Reinvestment Act. They would make sure the priorities of the framework are continued so the expected savings of \$288 million is reached. She said the committee will also study data driven justice reinvestment, resource allocation, and policies, in order to improve public safety, reduce recidivism, and reduce spending on corrections in Idaho.

**MOTION:** **Rep. Burgoyne** made a motion to send **S 1393** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Wills** will sponsor the bill on the floor.

**Patti Tobias**, Administrator Director of the Courts, recognized **Rep. Wood(35)** for her honorable service to the courts and her tireless efforts with the highly successful and nationally recognized Wood Pilot Project.

**Terry Kirkham**, Deputy Chief of the Division of Probation and Parole for the Idaho Department of Correction, presented a plaque and commemorative coin to **Rep. Wood(35)** honoring her years of service. The plaque read, "Certificate of Recognition is Presented to Representative JoAn Wood. In recognition of your leadership, dedication, and commitment, the Idaho Department of Correction wishes to thank you. Your vision for a safer Idaho is being realized in the Wood Project every day. This local treatment delivery system has confirmed the importance of community based-collaboration, has impacted the lives of numerous offenders and their families in District 35, and has made Idaho a greater and safer state." Rep. Woods(35) received a standing ovation from the committee and all guests.

**Rep. Wood(35)** said nothing has brought her more pleasure than to be involved in these peoples lives. She recognized the many people and agencies who were willing to give a different approach a chance and helped her along the way on this successful project.

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 11, 2014. **Motion carried by voice vote.**

**MOTION:** **Rep. Bolz** made a motion to approve the minutes of March 13, 2014. **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 2:23 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary

AGENDA  
**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE**  
**1:30 PM or Upon Adjournment**  
**Room EW42**  
**Wednesday, March 19, 2014**

SUBJECT	DESCRIPTION	PRESENTER
	Approval of Minutes	

COMMITTEE MEMBERS

Chairman Wills  
Vice Chairman Luker  
Rep Nielsen  
Rep Bolz  
Rep Bateman  
Rep McMillan

Rep Perry  
Rep Sims  
Rep Dayley  
Rep Horman  
Rep Malek  
Rep Packer

Rep Trujillo  
Rep McDonald  
Rep Burgoyne  
Rep Meline  
Rep Ringo

COMMITTEE SECRETARY

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MINUTES

## HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

**DATE:** Wednesday, March 19, 2014

**TIME:** 1:30 PM or Upon Adjournment

**PLACE:** Room EW42

**MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Trujillo, McDonald, Burgoyne, Meline, Ringo

**ABSENT/  
EXCUSED:** Representative(s) Nielsen, Perry, Sims, Dayley, McDonald

**GUESTS:**

**MOTION:** **Chairman Wills** called the meeting to order at 1:32 PM.

**Rep. Bolz** made a motion to approve the minutes of March 17, 2014. **Motion carried by voice vote.**

**Chairman Wills** thanked the committee for their hard work and dedication. He complimented each of them for working as a legislator for all the right reasons.

**Chairman Wills** recognized House Page, **Duncan Brain**, and Committee Secretary, **Francoise Cleveland**, for their exemplary work for the committee.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 1:51 PM.

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Representative Wills  
Chair

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Francoise Cleveland  
Secretary